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Before the Committee on Appropriations

Treasury, Postal Service, and General Government Appropriations

Fiscal Year 1981

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96th CONGRESS, SECOND SESSION

H.R. 7583

PART 2 (Pages 1–[illegible])

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
ADVISORY COMMITTEE ON FEDERAL PAY
COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED
DEPARTMENT OF STATE
DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE OF THE PRESIDENT
FEDERAL ELECTION COMMISSION
FEDERAL LABOR RELATIONS AUTHORITY
GENERAL ACCOUNTING OFFICE
GENERAL SERVICES ADMINISTRATION
MERIT SYSTEMS PROTECTION BOARD
NONDEPARTMENTAL WITNESSES
OFFICE OF PERSONNEL MANAGEMENT
U.S. TAX COURT

Micro 11-23

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS
SECOND SESSION

ON

H.R. 7583

AN ACT MAKING APPROPRIATIONS FOR THE TREASURY DEPARTMENT, THE UNITED STATES POSTAL SERVICE, THE EXECUTIVE OFFICE OF THE PRESIDENT, AND CERTAIN INDEPENDENT AGENCIES, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1981, AND FOR OTHER PURPOSES

PART 2 (Pages 1–728)

Administrative Conference of the United States
Advisory Committee on Federal Pay
Committee for Purchase From the Blind and Other Severely Handicapped
Department of State
Department of the Treasury
Executive Office of the President
Federal Election Commission
Federal Labor Relations Authority
General Accounting Office
General Services Administration
Merit Systems Protection Board
Nondepartmental witnesses
Office of Personnel Management
U.S. Tax Court

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TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

WEDNESDAY, APRIL 23, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 1318, Everett McKinley Dirksen Senate Office Building, Hon. Lawton Chiles (chairman) presiding.

Present: Senators Chiles and Schmitt.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

STATEMENT OF JAMES McINTYRE, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

ACCOMPANIED BY:
JOHN WHITE, DEPUTY DIRECTOR
WAYNE GRANQUIST, ASSOCIATE DIRECTOR
LINDA SMITH, ASSISTANT TO THE DIRECTOR FOR ADMINISTRATION

BUDGET REQUEST

Senator CHILES. This morning the committee will hear testimony from the Office of Management and Budget, the Office of Federal Procurement Policy, the Council on Wage and Price Stability and the Council of Economic Advisers. These agencies have requested a total of $61,932,000 for fiscal year 1981 and $6,432,000 for fiscal year 1980 supplementals.

We will begin this morning by receiving testimony from the Office of Management and Budget regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $32,056,000 and 571 permanent positions have been requested for fiscal year 1981, and $1,146,000 has been requested for the fiscal year 1980 pay increase supplemental.

The committee is pleased to have Jim McIntyre, the Director of the Office of Management and Budget, with us today.

Senator Schmitt, do you have an opening statement?

Senator SCHMITT. No; I will wait and see what Mr. McIntyre has to say.

PREPARED STATEMENT

Senator CHILES. Mr. McIntyre, we will insert your statement in full in the record at this point. We would be pleased if you would provide us with a brief highlight of your request.

[The statement follows:]

STATEMENT OF JAMES T. MCINTYRE

I appreciate the opportunity to appear before this Committee to discuss the fiscal year 1981 budget request for the Office of Management and Budget.

The Office of Management and Budget requests a fiscal year 1981 appropriation of $32,056,000. This request is a decrease of $1,490,000 from the office's estimated 1980 appropriation of $33,546,000 ($32,400,000 initially appropriated and a pending pay supplemental of $1,146,000).

1981 Budget Request

OMB's 1981 budget request of $32,056,000, is a four percent (4%) decrease from the estimated 1980 appropriation of $33,546,000. The 1981 request for 571 permanent positions is the same as for 1980.

This budget request will permit OMB to continue its efforts toward:

-- identifying programs in which the largest dollar savings could be achieved with the least sacrifice in program performance and service to the public as we move toward the President's goal of a balanced budget;

-- promoting efficiency and improved program management over a wide range of Federal activities, including financial management, grants administration, fraud and waste prevention, and regulatory reform and paperwork reduction; and

-- focusing special attention on the critical areas where increases are essential, notably defense, energy, basic research, and training and employment of the young.

Key factors in the FY 1981 budget request include:

1. Permanent personnel costs

Total personnel and personnel benefits costs for 1981 are estimated at $22,524,000, an increase of $394,000 from 1980. These costs comprise 70% of OMB's budget. Costs for permanent personnel show the largest increase, totalling $19,647,000 in 1981, up from $18,652,000 in 1980. This increase is a result of three factors: the full year cost of the 20 positions added to OMB's request in 1980, a higher retention rate for personnel in 1981, and an allowance for within-grade increases and promotions.

2. Non-permanent personnel costs

Our non-permanent personnel costs will decrease from the 1980 amount of $1,171,000 to an estimated $893,000. This decrease in consultants, temporaries, and part-time workers results from reductions in our reorganization efforts as several major projects are completed this year. In addition this reduction reflects completion of the Grants Consolidation Study required under the Grants and Cooperative Agreement Act of February 3, 1978.

3. Printing and reproduction costs

Total printing and reproduction costs are estimated in 1981 to total $1,887,000, a $214,000 increase from FY 1980 levels. In 1980 OMB was able to achieve major savings in the costs of preparing the budget documents by moving to a direct photocomposition printing method. Much of these savings are offset in 1981, however, by increased paper and labor costs, over which OMB has little control. For example, many of the directives we issue must be placed in the Federal Register for public review and comment. One page of print in the Federal Register has increased from $255 in 1979 to $372 in 1980 and is estimated at $408 in 1981. These increases are significant and cannot be absorbed.

4. Data processing costs

We have altered the method for determining OMB's share of central automatic data processing costs, the net effect of which is to decrease our total budget request for ADP services in FY 1981. In FY 1980 the Congress added $3,980,000 to OMB's budget to cover OMB's share of hardware and operational ADP costs being provided by the Office of Administration. The Office of Administration retained in its budget amounts necessary for systems development work supporting OMB tasks. In preparing our 1981 budget, we recognized that much of the ADP hardware and operational costs were fixed costs of the Office of Administration and more properly belonged in that offices' budget, rather than being distributed among the budgets of the other Executive Office agencies. Therefore, for 1981 the Office of Administration's budget includes total hardware and operational costs associated with supporting the central ADP Services Center of the Executive Office of the President.

OMB's budget in 1981 includes $1,460,000 for systems development work necessary to carry out our mission. This includes new software program development, modifications and enhancements to existing software programs, and key punching. Again, the funding for such efforts in 1980 was in the budget of the Office of Administration. The 1981 increase of $260,000 for systems development work results from the heavy demands associated with automating agency budget submissions to OMB.

Other changes from 1980 to 1981 reflect nondiscretionary and discretionary changes in the costs of supporting OMB's budget and management efforts. These include amounts to cover the increased costs of travel, postage, utilities, and equipment rentals, and additional amounts for training and computer timesharing. Details of these cost changes were transmitted in our formal budget justification.

1980 pay supplemental request

The 1980 pay raise supplemental of $1,146,000 is requested to cover the costs of the general schedule and executive level increases that went into effect on October 1, 1979, and associated personnel benefit costs. The request represents a 39 percent absorption of the total estimated costs of $1,889,000.

Programmatic Efforts:

The budget process.

The FY 1980 budget for OMB included an increase of 13 permanent positions for budget and program review. For 1981 we are requesting an additional three (3) positions, transferred from vacancies arising from the consolidation of the President's Reorganization Project staff. This will bring to 376 the number of positions devoted to budget and program review, and will permit OMB to continue meeting its growing fiscal analysis workload.

The budget examination process within OMB continues as a major function of this organization. Last month the budget staff completed an intense, detailed scrutiny of the Federal budget to determine where cuts could most rationally be made to achieve a balanced budget in fiscal year 1981. Simultaneous with this ongoing work, we are striving to make improvements in the budget process. The three year budget planning system, now in its second year, is more effective in reviewing and directing the long-range impacts of Government policies. This year a central system was installed to control the use of Federal credit. Under this system, specific credit limitations are proposed for most credit programs to bring under executive and congressional review and control many programs that had escaped the normal discipline of the budget in the past. The budget preparation process is also evolving and improving. As mentioned previously, OMB is exploring with all major agencies the feasibility of extensively automating the process of submitting and reviewing budget requests and budget updates. In particular to adequately meet on a timely basis Congressional requests for enhanced budget data, further automation of the entire budget review, printing and submission process is essential.

Making Government work better.

As the President's agent for achieving better management in government, OMB develops policies, provides guidance and monitors the performance of agency programs and procedures. In all these activities -- and especially in providing guidance and monitoring performance -- there is increasingly close cooperation and coordination between the budget examining staff and those staff with management responsibilities.

1. Reorganization activities

OMB's resources devoted to management work included 129 permanent positions in FY 1979, and 124 and 121 for FY 1980 and FY 1981 respectively. This slight decrease represents the completion of several major reorganization projects, and the redirecting of the remaining resources to other high priority management work.

The reorganization staff is being consolidated from it's FY 1979 level of 52, to 20 staff by the end of FY 1980, and 17 by the end of FY 1981. The FY 1981 reduction of three positions reflects elimination of overhead and administrative staff previously associated with the larger PRP effort.

Since 1977, 13 reorganization initiatives were proposed to the Congress. All were approved by the end of 1979. As a result, the government's capacity to manage its own workforce and to deal effectively with such critical issues as energy, education, national security and crisis management, and international trade and development have been strengthened. OMB is now increasing significantly its management capability in areas such as regulatory reform, paperwork reduction, the Sunshine Act, information management, improved Federal/ State/local relationships, and fraud and waste. Permanent positions in these areas totalled 77 in 1979, and increased to 104 positions for FY 1980 and FY 1981. These increases reflect both Congressional and Executive Branch views of high priority management responsibilties.

2. Regulatory reform, paperwork reduction, and information policy activities

To carry out its expanding management functions OMB recently instituted an internal reorganization. This reorganization combines two former OMB divisions -- Regulatory Policy and Reports Management, and Information Systems Policy -- into a single augmented Office of Regulatory and Information Policy.

Through the excellent work of the Regulatory Policy and Reports Management Division and the Information Systems Policy Division, OMB has established an entirely new framework for evaluating and improving the management of the Federal regulatory processes; reducing the burden imposed by regulations and paperwork on the public; and providing policy guidance to Federal agencies in the area of ADP and telecommunications systems.

The increasing importance of these subjects merited devoting increased resources and top level attention to them within OMB. This was the basis for establishing the new

Office. It will be responsible for establishing the policies, principles, and guidelines that govern the development and implementation of Federal regulations, and the collection of information by Federal information systems which support these and related activities.

Major efforts continue on regulatory reform and paperwork reduction. In 1978, Executive Order No. 12044 was issued, requiring agencies to assess the economic consequences of new regulations, to write regulations clearly, and to eliminate unnecessary rules. Legislation has been proposed to codify and broaden the coverage of these reforms. Under this Executive Order, OMB has been assessing its own directives and is in the midst of a comprehensive review of how to improve the method by which we prepare and issue directives, especially those that have effects outside the Government. In a complimentary action, the paperwork burden imposed by the Federal Government on our public has been reduced by almost 15% in the past two years, and the paperwork reduction efforts will be intensified.

3. Federal assistance efforts

The Catalog of Federal Domestic Assistance, the reference document containing programs which provide assistance to communities and individuals, has been substantially improved. The Catalog is now published three times a year (rather than two as in previous years), and includes additional aids to applicants such as how to apply for assistance, how to write a grant proposal, expanded functional categories to help in identifying programs, additional eligibility categories for applicants, and criteria used by agencies to select proposals.

The Federal Assistance Programs Retrieval System (FAPRS), an automated system for obtaining information on

Federal assistance, has been improved by incorporating the Catalog's expanded functional categories for identifying programs, expanding the eligible applicant rules, increasing the program search criteria, and providing procedures for displaying management policy circulars that apply to assitance programs.

4. Financial priorities program

OMB, in consultation with the Congress and the Comptroller General, has developed a Financial Priorities program to improve the management of Federal funds. The priorities include examining accounting systems, improving internal controls, cash management, and debt collection procedures, resolving audit findings promptly, and other measures to improve agency financial systems.

Also, in concert with the Comptroller General, OMB has improved the coordination of Federal, State, and local audits of federally assisted programs. A single audit -- rather than audits of each grant -- is now required of each recipient of Federal aid. OMB has the lead role in the Administration's efforts to simplify and streamline the management of Federal grants. Toward this end, consolidation or simplification of grant programs in 10 areas has been achieved or proposed to facilitate more efficient grant administration. The audit reform referred to above is a major milestone. Efforts are being pursued to reform and standardize planning requirements; and hundreds of inconsistent and duplicative financial requirements of individual grant programs have been replaced by standard application forms, uniform cost principles, and streamlined reporting rules.

Summary

Our 1981 request represents what we believe to be prudent and responsible budget constraint. At the same time, however, it channels our available resources into those areas that are essential to meet the challenges of helping to manage Federal spending and operations.

Mr. McIntyre. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, we appreciate the opportunity to appear before this committee to discuss the fiscal year 1981 budget request for the Office of Management and Budget. I have two members of the OMB staff at the table with me today that I would like to introduce. Linda Smith, who is Assistant to the Director for Administration, and Mr. Wayne Granquist, who is an Associate Director of OMB, will be with me, and I would like for them to be able to answer questions that pertain to their respective areas.

I might mention at this time that our total 1981 request and our 1980 pay supplemental request are somewhat lower than when we originally submitted our justification material to you several weeks ago. Adjustments were necessary due to the hiring freeze and operating expense reduction imposed by the President. My remarks today, as well as the opening statement submitted to you for the record, reflect these adjusted amounts, although our detailed justification has not been revised. I understand, however, that my staff has been working with the committee staff on the more detailed justification.

The Office of Management and Budget requests a fiscal year 1981 appropriation of $32,056,000. This request represents a decrease of $1,490,000 over the Office's estimated 1980 appropriation of $33,546,000. The fiscal year 1981 appropriation would fund 571 permanent positions, the same staff level as fiscal year 1980.

In 1981 OMB will continue its commitment to identify programs in which the largest dollar savings can be achieved with the least sacrifice of program performance, and we will implement the President's goal of a balanced budget. We will continue to promote efficiency and improvements in Federal program management and grants administration, fraud and waste prevention, regulatory reform, paperwork reduction, information management, and Sunshine Act monitoring. We will also continue to adjust fiscal priorities to critical areas where expenditure increases are essential—namely, defense, energy, basic research, and employment of our young people.

There are two key factors that impact OMB's 1981 budget request—personnel costs and automated data processing costs—and I would like to briefly summarize them.

PERSONNEL COSTS

Personnel costs comprise 70 percent of OMB's budget. Total personnel and personnel benefit costs for fiscal year 1981 are estimated at

$22,524,000. That is an increase of $394,000 over 1980, even though the total number of staff will remain the same at 571 permanent positions. The increase results from the impact of full year costs for the 20 new positions added to OMB in 1980, a higher retention rate for personnel in 1981, pricing out the October 1, 1979 pay increase, and partial offsets created by a decrease in consultants, temporary and part-time workers.

DATA PROCESSING COSTS

The second major factor in our budget is data processing costs, which show a decline in OMB's 1981 budget, but I need to explain further. In fiscal year 1980 the Congress added $3,980,000 to OMB's budget to cover OMB's share of hardware and operational ADP costs being provided by the Office of Administration. The Office of Administration retained in its budget amounts necessary for systems development work supporting OMB computer data. In preparing our 1981 budget, we recognized that much of the ADP hardware and operational costs are fixed costs of the Office of Administration and more properly belong in that Office's budget rather than being distributed among the budgets of the other Executive Office agencies. Therefore, for 1981, the Office of Administration's budget includes total hardware and operational costs associated with supporting the central ADP services of the Executive Office of the President.

OMB's budget in 1981 includes $1,460,000 for systems development work necessary to carry out computer supported functions. This includes money for new software development, modifications and enhancements to existing software programs, and key punching expenses. Again, the funding for such efforts in 1980 was in the budget of the Office of Administration.

Mr. Chairman, there is a much more detailed discussion of our request in the statement that has been submitted and has been inserted in the record. With this brief summary, I will be glad to try to answer the committee's questions.

Senator CHILES. Thank you, Mr. McIntyre.

TWENTY POSITIONS

Last year the Senate-House conference report confirmed 20 additional positions should be added to OMB to be used exclusively for the management side. The conference report indicated the positions should be used to assist in efforts of eliminating fraud and waste; reducing the paperwork burden; and monitoring and insuring agency compliance with the Sunshine Act. We have your letter of March 17 in which you tell us how you are going to assign those positions. But I understand none of the paperwork positions have been filled yet, and because of the vacancies there are fewer OMB employees engaged in paperwork reduction than last year. Is that correct?

Mr. MCINTYRE. My understanding is that we have not decreased the staff effort of dealing with paperwork reduction. You are correct in that we did have 20 additional positions allocated to the Office of Management and Budget for 1980. We have filled 10 of those positions. The other positions are caught right now in the freeze. However, we are still seeking to fill three of our top positions in the information and regulatory activities of the Office of Management and Budget. They will deal with information management, regulatory analysis and paperwork reduction. And I would think by the time we get those positions filled, then we would be in a position to move on toward completing the task of filling the total 20 positions by the end of the year.

PERSONNEL LEVELS

Senator CHILES. The President's January budget proposed to maintain OMB's overall personnel level in 1981 at the same level as 1980, increasing the budget side by three positions at the expense of the management side. Why doesn't OMB reallocate the three positions no longer needed for the reorganization projects within the management side of OMB?

Mr. MCINTYRE. Mr. Chairman, as you may recall, when we established the reorganization effort in the Office of Management and Budget, we transferred a number of positions from the budget activities to assist in the reorganization efforts. We have simply restored some of those positions back to the budget activities, and yet increased our emphasis on management initiatives, as you and I have discussed on a number of occasions. These positions, as I remember—and I may need some help from Ms. Smith—the three positions are basically administrative type positions to help the reorganization staff to manage the fiscal and personnel and other administrative activities of the reorganization effort, and we are transferring those back to restore some of the positions we borrowed from the budget activity when the reorganization initiative was undertaken.

Ms. SMITH. That is correct. These were three positions that were associated in the overhead operation of the President's reorganization project, helping them keep track of their personnel and all the other administrative activities associated with that project effort.

OFFICE OF REGULATORY AND INFORMATION POLICY

Senator CHILES. Going now to the Office of Regulatory and Information Policy, part of the concept behind its creation is to link government-wide oversight of regulatory rulemaking requirements to the report clearance process. Tell me how you believe this is going to work to reduce unnecessary regulatory costs while also reducing the paperwork burden, and how do you plan to structure the paperwork effort within this office?

Mr. MCINTYRE. The Office of Regulatory and Information Policy was created to try to bring into the mainstream of the Office of Management and Budget regular work decisions with respect to reports, report clearance, paperwork, and the use of data processing and telecommunications for transferring and storing and retrieving information so that as we carried out our responsibilities in keeping paperwork under control and actually reducing it, and as we carried out our responsibility for report clearance, we could tie this activity directly into the budget examiners' role as the budget examiners review agency budgets and other issues with respect to the daily operations of the Federal Government. And it was our thought that by pulling together the regulatory and information policy activities, that we could tie this into the budget examiners' work, particularly as we were striving to reduce the paperwork burden in the Federal Governement.

Mr. Granquist has been in charge of overseeing this effort. I might ask Mr. Granquist if he could elaborate on how the office functions on a day-to-day basis.

Mr. GRANQUIST. Mr. Chairman, we set up the Office of Regulatory and Information Policy much like the budget side of OMB. We have analysts assigned to individual agencies, and they are responsible within those agencies for the cost of those regulations, the paperwork that flows out of the department or agency concerned, and with the information system that department or agency has. We have tied regulatory oversight to the Federal Reports Act. The Federal Reports Act is a very powerful tool, and we are seeking to amend and strengthen it even more. But we have tried that tool in our regulatory oversight responsibility in connection with the President's regulatory reform program. Our hope is that we will be able to continue to reduce paperwork. We find as we look down the pike, more and more paperwork in the future is associated with regulatory programs. Therefore, the connection between information and regulatory programs seems to be very clear.

Senator SCHMITT. Mr. Chairman, could I followup a little bit there?

Senator CHILES. Yes.

PAPERWORK MANAGEMENT

Senator SCHMITT. Mr. McIntyre, in your testimony you say the paperwork burden imposed by the Federal Government on our public has been reduced by 15 percent in the past 2 years. Where does that number come from and how did you get it?

Mr. MCINTYRE. We keep a record of the paperwork burden. We publish a report on that, and that figure comes out of our latest report. It is usually issued in the summer.

Senator SCHMITT. But how is the number obtained? Fifteen percent of what? Is that the total number of reports required of the public or total number of papers? What is the 15 percent?

Mr. MCINTYRE. It is an estimate of total amount of hours it takes to comply with filling out Federal forms.

Senator SCHMITT. Why do you think I still, when I go out to New Mexico, hear nothing but cases of increased paperwork rather than decreased?

Mr. MCINTYRE. For the same reasons I get those same reactions. It is very difficult for people to feel the impact in the reduction. For example, they still have to fill out their tax forms and they still have to fill out the census reporting form.

Senator SCHMITT. Hospitals, small businesses, the energy business, everybody seems to be able to document an increase over the last 2 years rather than a decrease. What industries and what areas of public endeavor have seen the decrease?

Mr. McIntyre. Let me ask Mr. Granquist to respond.

Mr. Granquist. To give you an idea of the total size of the impact, Senator, we are talking about numbers in the millions. We began in 1977 with a burden on the public of 930 million hours a year of time filling out Federal information requests. That number has been reduced. We keep track of them because they have to clear all these forms in OMB. That number has been reduced by 130 million hours a year.

Examples of specific reductions are, for example, OSHA. OSHA has made it unnecessary for any business employing less than 10 people to report at all to OSHA. That exempted 40,000 businesses across the country.

Senator Schmitt. Yes, the Congress did that.

Mr. Granquist. OSHA and Congress. OSHA did it first and Congress agreed. The fact of the matter, whether it is done by statute or administrative action, there have been specific reductions in various programs.

Senator Schmitt. When I go talk to the copper smelting people, they say OSHA is there in their inspections and reports more than they ever were. You say it has been reduced by 130 million. How do you get that number? Is that an estimate on the part of OSHA?

Mr. Granquist. Each form that is required by the Federal Government to be filled out by the American people, by business or anybody else takes a certain amount of time to collect the data, collect the information, put the information into it, and it is presented in terms of hours of time required. We first require the agencies to estimate that burden when they come in for a clearance of the form. We expect the public, the regulated industries, to agree with or disagree with or give us their assessment of that burden. We publish the most important forms in the Federal Register for comment by the regulated industries before we clear those forms. So we get the number piece by piece. It is not an assessment out of the corner of our head.

Senator Schmitt. Well, it is unfortunate that the impact hasn't been at least noticed by the people out in the field yet. You said $900 million, something like that. Why does a respected researcher like Weidenbaum estimate that in 1980 something over $100 billion worth of costs to the private sector resulted from regulation?

Senator Chiles. That is not just paperwork, that is regulation.

Mr. Granquist. The paperwork number I talked about was in hours.

Senator Schmitt. Do you know if he agrees with that component?

PAPERWORK COSTS

Mr. Granquist. Murray Weidenbaum assumed for every dollar of Federal expenditure on regulatory activities there is a $20 cost in the private sector for compliance. How he gets his $100 billion, economists can argue all day whether or not that is correct. We know we have costs of compliance in the private sector which are significant from regulation. The effort of this administration is to reduce that burden. Paperwork is only a part of this compliance cost.

Senator SCHMITT. I am wondering whether he would agree with $900 million.

Mr. GRANQUIST. It is 900 million hours, h-o-u-r-s.

Senator SCHMITT. Hours, I am sorry.

Finally, OMB issues regulations for internal operations of Government; is that not correct?

Mr. MCINTYRE. We don't refer to them as regulations. We issue circulars and bulletins.

Senator SCHMITT. Do we have any estimate what the cost to the Federal Government is of the OMB regulatory effort, circular effort, whatever we want to call it?

Mr. MCINTYRE. No.

Senator SCHMITT. Has any attempt ever been made to estimate that?

Mr. MCINTYRE. Not that I am aware of.

Ms. SMITH. We have taken a look at the circulars which OMB issues and have determined that 25 of them are covered by Executive Order 12044, which is the order that requires our analysis of the impacts, workload impacts and cost impacts, of those regulations. We have completed review of approximately 15 of those 25 circulars to reexamine their impacts and revise them and update them. We are taking a look at the other 10. We intend by the end of the 2-year period to have reviewed all the circulars and make assessment of how much they are impacting Federal operations.

OMB CIRCULARS

Mr. MCINTYRE. I might add, Senator, we try to keep OMB circulars to a minimum. In most cases they are required because of the necessity for uniformity in the Federal Government in approaching a problem—for example, developing the budget, for dealing with the administration for Federal grant-in-aid program, to a diverse number of specifics. The circulars that we do have are there for a specific purpose: To provide for some consistency in the policy that the Federal Government applies in dealing with a diverse group.

Senator SCHMITT. I understand the purpose, Mr. McIntyre, but I suspect like most bureaucracies there may be more regulation than may be required. I hope that when you have your analysis complete you will share that with the committee so that we can get a better feeling for just how the agency operates, as well as what you think the burden of that operation is. I am not saying it may not be a necessary burden, but it will be useful for the committee to know how that is spread out over the Government.

Thank you, Mr. Chairman.

SUNSHINE ACT

Senator CHILES. In last year's appropriations hearing you stated that OMB had established a reference body of agency sunshine regulations and procedures in an effort to determine the level of agency compliance to the act. You had over a year to analyze these regulations. Have you used this information to determine the level of agency compliance with sunshine? If so, what are your conclusions regarding agency compliance?

Mr. McINTYRE. Mr. Chairman, we have reviewed the regulations that the agencies have established to implement the Sunshine Act. Basically, the regulations largely restate what the act requires, but they do, in the judgment of my staff, meet the requirements of the act. One of the first steps in complying with the act is to develop these regulations. But the review of these regulations should not necessarily be looked upon as a compliance monitoring effort. The real key to compliance is not necessarily the regulation, but how the agencies are complying with the act. We will continue to review the regulations of the agencies and we will continue to emphasize that in any guidance we issue.

Senator CHILES. Have you issued any new guidance such as a model regulation?

Mr. McINTYRE. We have not issued any model regulations. We have issued some guidance to the agencies. We would certainly be willing to explore additional types of guidance that could be issued with your staff, and we would be glad to include in that guidance suggestions that maybe should be incorporated in the regulations themselves.

Senator CHILES. Well, I agree with you that the regulations are just sort of a starting point, that what they do is more important. But if they draw the regulations in such a way that they exempt all kinds of meetings, we are never going to get a chance to monitor whether they are complying or not. Are you satisfied that all of the agencies have regulations that meet the intent of the act?

Mr. McINTYRE. Yes, that meet the intent.

Senator CHILES. Do we know whether they are following their own regulations?

Mr. McINTYRE. As you know, some of my staff has been going out into the field to sit in the meetings and see how they are complying.

Senator CHILES. Is anyone reviewing transcripts on a continuing basis?

Mr. McINTYRE. Yes.

Senator CHILES. How many transcripts has OMB reviewed in the last year?

Mr. McINTYRE. I don't have that number at my fingertips. I would be glad to supply it.

[The information follows:]

OMB reviewed the transcripts of the Nuclear Regulatory Commission after the Three Mile Island incident, and minutes or transcripts of five meetings of each of the Occupational Safety and Health Review Commission, the Parole Commission, the Federal Reserve, and the Federal Deposit Insurance Corporation.

Senator CHILES. What are your conclusions regarding the use of the exemptions?

Mr. McINTYRE. Well, I think that I have some facts that I would be glad to supply for the record that come from our review of the agencies' compliance with the sunshine law.

First of all, let me say there have been basically three elements of our monitoring activities. First, we have monitored the agency meeting notices to determine and report on the number of meetings and whether or not they are open to the public, and I have statistics that we have developed for 1979. I will be glad to supply them for the record.

[The information follows:]

During fiscal year 1979, 52 agencies held a total of 2,181 meetings under the Government in the Sunshine Act. Of those meetings, 961—44 percent—were open to the public, 852—39 percent—were closed, and 368—17 percent—were partially open and partially closed.

Second, issuance of guidance to the agencies, which we have discussed, and I believe I have sent to the committee a copy of my letter of August 28 of last year that I sent to the heads of agencies whose meetings are covered by the Sunshine Act.

Senator CHILES. We got that and were encouraged by it. I think the guidance contained in that letter would be of great assistance to the agencies and that it is a good beginning.

Mr. McINTYRE. Then the third component of Sunshine Act monitoring was the attendance at meetings to observe the way the meetings were actually conducted.

Senator CHILES. How many meetings did your people attend?

[The information follows:]

OMB representatives attended 28 meetings.

Mr. McINTYRE. I will have to get the exact number of meetings. I do know we attended meetings in some 27 agencies.

Senator CHILES. I would like to know what agencies.

Mr. McINTYRE. I will submit that. I have a list of the agencies, and I will submit that for the record.

[The information follows:]

AGENCY SUNSHINE ACT MEETINGS ATTENDED

Civil Aeronautics Board
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Product Safety Commission
Council on Environmental Quality
Equal Employment Opportunity Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Energy Regulatory Commission
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mine Safety and Health Review Commission
Federal Reserve System
Federal Trade Commission
Foreign Claims Settlement Commission
Harry S. Truman Scholarship Foundation
International Trade Commission
Legal Services Corporation
National Railroad Passenger Corporation
National Science Board
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Overseas Private Investment Corporation
Renegotiation Board
Securities and Exchange Commission
National Credit Union Administration

SUNSHINE ACT—FUTURE GUIDANCE

Senator CHILES. Fine. I think there are several issues that could be addressed relating to proper implementation of sunshine, including the use of notation voting and proposed use of exemptions, the exercise of closing provisions, a definition of the term "meetings," and, of course, model sunshine regulations with a proper emphasis on openness. That seems to me to be a sample of the topics that OMB could address, and

I would like to know what plans you have now to issue any additional guidance to the agencies and what issues will be the topic of your next advisory letter?

Mr. McINTYRE. Well, I think that, first of all, I can commit to the committee that I will issue some additional guidance in the future. The nature and details of the guidance I think is something we have to work out, Mr. Chairman.

SUNSHINE ACT ENFORCEMENT

Senator CHILES. You have a sunshine task force. What is the role that that task force plays in formulating policy guidance?

Mr. McINTYRE. We usually consult that group as we develop this guidance, and I believe that the group was consulted on the guidance set forth in the letter that I sent out on August 28, and I will continue to use it.

Let me say, Mr. Chairman, that we have one inadequacy in the Sunshine Act that limits anyone's ability—perhaps even yours—to followup and to really enforce that law, and that is there is no enforcement mechanism. The only enforcement tool we really have is the process that we have set in motion jointly to monitor what the agencies do, to maintain factual information about compliance with the act, issue guidance and make that information public so that the agencies behave, scrutinized by the Congress and by the public. But otherwise we do not have an enforcement mechanism in the law which OMB can use to enforce compliance. And I hope that at some time if we are to continue this effort to monitor compliance with the sunshine law, we can correct that deficiency in the law.

Senator CHILES. What kind of enforcement powers do you think you need?

Senator SCHMITT. Don't these people work for the President?

Mr. McINTYRE. These are the independent regulatory commissions.

Senator SCHMITT. I thought you were referring to the departments.

Mr. McINTYRE. There are a couple in the executive branch that are not independent regulatory commissions. The sunshine law affects multiheaded agencies, and that is basically the independent regulatory commissions.

Mr. Chairman, I think that the type of enforcement tool is something we need to work out together with Congress. The Congress jealously guards its relationship with the independent regulatory commissions, and I think that any efforts to effect enforcement of the Sunshine Act is something we should develop jointly with the Congress.

CIRCULAR A-10

Senator CHILES. In the past we discussed the effect of OMB Circular A-10, which encourages agencies to freely use exemptions, specifically exemption 9-B, to close meetings at which budgetary information might be discussed. We have repeatedly asked you to revise the circular to comport with the spirit of the act. What progress has been made in revising A-10?

Mr. McINTYRE. I think A-10 is adequate.

Senator CHILES. We think it is inadequate.

Mr. MCINTYRE. I do not believe that it encourages the agencies to hold closed meetings. I would agree with what I think is implied in your questions, and that is that some agencies use A-10 in situations where it may be questionable that A-10 is a proper tool.

Senator CHILES. Is it still the position of OMB to encourage agencies to close under exemption 9-B those meetings where they are going to discuss budgetary matters?

Mr. MCINTYRE. Those meetings that are truly budget matters. I would think there are some matters that are not truly budget matters, and perhaps that is one item that we could address in any future guidance that we issue to clarify the terminology of budget matters so that it excludes such things as maybe purchasing furniture.

Senator CHILES. I am going to get a copy of 9-B and I will come back to that and ask you some more questions.

FRAUD AND ABUSE

During your testimony last year you described the formation of two governmentwide task forces to look into problems of fraud and abuse and waste and mismanagement within the executive branch. One chaired by the Attorney General was charged with looking into fraud and abuse, and the other chaired by Mr. Campbell of the Office of Personnel Management was charged with looking into management weaknesses. Are these two organizations in full operation at this time?

Mr. MCINTYRE. Yes, they are. And I might just correct for the record one observation. The President's Management Improvement Council is jointly chaired by the Director of OMB and Mr. Campbell.

Senator CHILES. What are the permanent staffs of each of those?

Mr. MCINTYRE. The permanent staff of the President's Management Improvement Council totals four people: an executive director, two professionals and a secretary.

Senator CHILES. How often do they meet?

Mr. MCINTYRE. The Management Improvement Council meets quarterly, but its steering committee generally meets every 2 weeks or so.

The Executive Group to Combat Fraud and Waste meets quarterly, and I might add that my deputy is the vice chairman of that group.

Senator CHILES. How are they staffed and how often do they meet?

Mr. WHITE. If I may add one thing first, Mr. Chairman, and that is the Attorney General has taken a strong interest in this and we are now meeting more often until we are satisfied we have an agenda that we can go back to quarterly meetings. We have made progress. We have just reviewed the issue with respect to what form of permanent staff we ought to have, what the agenda for that staff ought to be, and how it ought to relate to both Justice and OMB.

Mr. GRANQUIST. We will have a staff of eight people associated with the Executive Group to Combat Fraud and Waste.

Senator CHILES. Does the chairman of each group have the authority to give orders and clout to insure those orders are carried out?

Mr. MCINTYRE. Yes.

Senator CHILES. We found in our own investigations that there is a symbiotic relationship between weak management and corruption. Where the management is slipshod and rules and regulations are honored in the breach, you have a most fertile breeding ground for outright fraud. Given this, what steps are taken to insure that Mr. Campbell's task group and Mr. Civiletti's task force are both marching to the beat of the same drummer?

Mr. McINTYRE. When the President created these two groups, he stated that while the two efforts should be organizationally separate, that each of the leaders of these two groups should assure their efforts complemented each other. As I mentioned, OMB cochairs the Management Improvement Council and vice chairs the Executive Group. One of our principal aims in both roles is to assure that the efforts of the two groups are complementary. And I believe that this is being accomplished in the current environment.

For example, two of the major projects that the Council has underway have clear implications for reducing the possibilities of fraud and waste by improving management in the area of debt collection and in travel management. And we are integrally involved in this, and I guess if you came right down to it, that OMB is the central focal point for the coordination of the efforts of these two groups.

I think also that with the concerted effort that these groups can make, along with the Inspectors General which we have established in each agency, that we are clearly moving on the effort to eliminate fraud and waste in the Government.

CIRCULAR A-10

Senator CHILES. Going back now to the A-10 circular, the exemption 9-B under the provisions of the Sunshine Act, which would say all meetings would be held open unless it falls within one of these exemptions, it says in the case of any agency, that the opening of the meeting is likely to sufficiently frustrate implementation of a proposed agency action.

Now do you read, and is your circular still standing, that they should freely use exemption 9-B to close meetings where they are going to discuss anything having to do with their budget? Is it going to frustrate the agency? Is it going to frustrate the people's knowing, the Congress' knowing what their figures are?

Mr. McINTYRE. I think the key words are "freely encourage." We don't freely encourage the agencies to use this exemption. I do not think that everything that is done with respect to the budget necessarily falls within the guidance of A-10. As I said, I would be willing to clarify those types of actions we think may fall outside the scope of A-10 that may have been used by some agencies to close their meetings. We are, as you know, on the record, the President is on the record, in supporting openness in Government.

Senator CHILES. I think you are. But I think you are still conflicting signals as long as A-10 stands there and was put on the way it was, saying that the agencies are encouraged to use section 9-B to close those meetings. I think that is a very conflicting signal with what the other letters and role of OMB has been. That is why I ask you every time have you done anything about that circular.

Mr. McIntyre. I would be willing to clarify the intent of the circular through guidance to the agencies covered by the sunshine law.

Senator Chiles. We would like very much to see it clarified.

FEDERAL GRANTS AND COOPERATIVE AGREEMENTS ACT

When Congress passed the Federal Grants and Cooperative Agreements Act of 1978, OMB estimated the cost at $670,000 to manage the section 8 study. What did it cost to undertake the study, and what level of resources were applied to that effort?

Mr. McIntyre. Mr. Chairman, let me go back to your 9–B exemption. I have some information that was collected on the use of the exemptions that I would like to supply for the record.

Senator Chiles. All right, sir.

Mr. McIntyre. And I think that explanation will show in the last 6 months of 1979, exemptions cited for closure of meetings regarding financial information actually showed a decrease of about 7 percent. But I would like to supply that information to the committee for the record.

[The information follows:]

In the first year of the act, 39 percent of the exemptions cited for closure of meetings were those regarding financial information. In the last 6 months of 1979, those exemptions were cited only 33 percent of the time.

The most frequently cited exemptions in 1979 were:

	Percent
Exemption 5—accusation of crime or formal censure	17
Exemption 7—investigatory records	19
Exemption 10—issuance of subpena, et cetera	25

With respect to the question you just asked about the implementation of the Federal Grant and Cooperative Agreements Act, as you know, we undertook to conduct the study within our existing framework. In fact, my intergovernmental relations staff had the primary responsibility for this study. We did add some additional staff and consultants to help with the study. The total costs, including those costs that were already in my budget, were $470,000 for a portion of the 2 fiscal years 1978, 1979, and part of the fiscal year 1980. Out of that, about $220,000 was required above my basic budget.

Senator Chiles. One of the results of the study is that you have created an assistant policy branch within OMB and have designated Mr. Granquist as the focal point for assistance policy. The report listed actions the President and OMB would take to simplify grants administration. Which of those actions have already been taken?

Mr. McIntyre. We have a Presidential memorandum that is going to be sent to all the agencies in the final clearance process, and it will be out shortly. We have some efforts underway to establish an interagency policy and working group to assist implementation of the action proposed in the report itself and grants legislation which would provide additional statutory authority that is needed to effectively guide assistance management practices being prepared, and it will also be forwarded to the Congress in the near future.

FEDERAL INFORMATION LOCATOR SYSTEM

Senator CHILES. The pilot study for the Federal information locator has been completed. That is a system to help agencies avoid duplicative information requests. Can you point to any result of that, and when do we expect the locator system to become operational?

Mr. MCINTYRE. We have been conducting a pilot study for the Federal information locator system. The pilot study has been completed. We found that all of the agencies participating with us in that effort endorsed the fundamental usefulness of a comprehensive locator system to help identify and eliminate duplication of information.

Let me ask Mr. Granquist to give you a more detailed report of where we are, sir.

Senator CHILES. All right, sir.

Mr. GRANQUIST. The work we have done thus far has been largely developmental. First we tried out the Defense Department software system. It worked in some places but not others. We have tested this with six agencies. We have completed all our testing. We are about to go out to final development, to bring this out by the end of the year. We have an agreement, we have a common definition of the software we need. The tests of those six agencies indicate we are on the right track, that an information locator system is something that shows Federal agencies where the information they are seeking may already exist. It is a useful and sensible idea and one that should be implemented as rapidly as possible. We believe the result of the full implementation of this system would be substantial, but the test doesn't give us any specific examples to speak to your specific question.

Senator CHILES. So we don't have any idea when it will be operational.

Mr. GRANQUIST. It will be full-fledged in 1982. So that is 1½ years.

JOINT FUNDING EFFORTS

Senator CHILES. The Joint Funding and Simplification Act of 1975 expired last February and the reauthorization bill passed the Senate and sits in the House. What consolidated and joint funding projects are you working on that are jeoparized if the act is not reauthorized?

Mr. MCINTYRE. I will have to get you the specific ones. Let me say, however, if the act is not reauthorized, Mr. Chairman, we have no statutory authority to provide for joint funding arrangements. To say that another way, without the joint funding authorization, each agency would have to negotiate its own interagency agreements with all the other involved agencies and all the disparate legal authorities we now face in the law. Without this joint funding act, it would be extremely difficult for us to establish any appropriate process or mechanism to maintain current arrangements and create additional opportunities for State and local governments to coordinate multiple funding requests.

I have a list which I will submit for the record of the current funding activities. I will be glad to submit this for the record.

[The information follows:]

JOINT FUNDING SUMMARY[1]

	No. of projects	Federal funding	Feder award include
Regional projects	21	$41,312,400	85
National projects	25	8,045,700	127
Totals	46	49,358,100	212

[1] No applications are in process due to expiration of Joint Funding Simplification Act on February 5, 1980.

REGION	RECIPIENT	FEDERAL AGENCIES	FUNDING PERIOD YEARS IN JOINT PROJECT	FEDERAL FUNDS
I	Greater Portland COG, Portland, Maine (Regional Planning)	HUD, DOT, EPA	79-80 2	$ 91,500
	Rhode Island (State Planning)	FHWA, EPA, UMTA, HUD	79-80 8	632,500
II	None			
III	Boone County, W.VA. (Social and Health Service Center Construction)	HUD, ARC, EDA	78-81 2	2,050,000
	Crum, W.Va. (Water System)	FmHA, HUD, EDA	79-80 1	1,090,500
	Lewisburg, W.VA (Water System)	FmHA, EDA ARC, HUD	75-80 5	5,650,000
	Commonwealth of Pennsylvania (Three Mile Island Research)	HUD, EDA CSA, DOE	79-80 1	411,600
	RIC, Charleston, W.VA. (Regional Planning)	EDA, ARC, HUD, UMTA, FHWA	79-80 5	239,700
	Scranton, Pa. (Health Services Center Construction)	HUD, ARC	78-80 2	1,766,700
	Williamson, W.Va. (Water System)	FmHA, HUD, EDA	77-81	7,672,000
IV	Atlanta Regional Commission (Regional Planning)	HUD, UMTA, ARC, EPA, FAA, FHWA	79-80 8	2,600,000
	Chattanooga, Tennessee (Social Services)	DOL, HEW, CSA	79-80 5	6,600,000
	Commonwealth of Kentucky (Regional Planning)	EDA, HUD ARC, UMTA	79-80 9	2,561,000
	N. Georgia Area Planning and Development Commission (Regional Planning)	ARC, EDA, HUD HEW	79-80 1	249,6000
	S. Carolina Appalachian COG (Regional Planning)	ARC, HUD, HEW, EDA, DOT, DOI, LEAA	79-80 7	595,000
V	None			
VI	Cheyenne-Arapaho Tribe	BIA, ANA, IHS, HEW/OE	79-80 2	1,309,000
VII	Hayti-Heights, Mo.	FmHA, HUD, EDA, EPA	78-80 2	1,553,500
	Omaha Tribe, Macy, Nebraska (Water System	FmHA, HUD HEW	79-80 1	2,250,000

REGION	RECIPIENT	FEDERAL AGENCIES	FUNDING PERIOD YEARS IN JOINT PROJECT	FEDERAL FUNDS
VIII	None			
IX	Sacramento Regional Area Planning Com.	HUD, EPA UMTA	79-80 5	$ 520,000
	Salt River Pima Maricopa Tribe	OHDS, ANA	79-80 6	166,000
	State of Arizona (Statewide Planning)	HUD, EPA, HEW, EDA, CSA, UMTA	79-80 5	2,363,900
X	Puget Sound COG (Regional Planning)	HUD, UMTA, FHWA, EPA, DOC, DOL, OPM, EDA	79-80 6	900,000
National	Utah Department of Social Services (Integration of Services)	OHDS, SSA, HCFA	79-80 2	75,000
	University of S. California (Community Planning)	OPM, HUD	78-80 2	189,000
	National Training and Development Service (Personnel Management Curricula)	OPM, HEN/OE	79-80 1	201,700
	Urban Initiatives			
	Philadelphia, Chicago, Boston, Bridgeport/Waterbury, Conn., Buffalo/Erie County, Portland, Oregon, Elizabeth, N.J. (Air Quality Technical Assistance)	HUD, EDA, DOT, EPA	79-81	4,000,000
	National Citizen Participation Council, Inc. Training for CDBG Residents)	HUD, DOE	79-81 1	580,000
	Blackfeet Tribe, MT., Buffalo, N.Y. Gennessee County, MI, County, MI, Lynn, MA, Metcalfe, Miss., Milwaukee, New York City, Patterson, N.J., Philadelphia, PA, Portland, OR, Portland, ME, Seattle, WA, San Antonio, TX, Wilmington, DE	HUD, DOL, EDA, DOT, SBA, CSA	80-82 1	3,000,000
	Commercial Area Open Space Evaluations	HUD, UMTA, FHWA Not Joint Funded Supported through Joint Funding HUD, DOT		147,500 600,000

Senator CHILES. Is the administration doing anything on the House side to try to generate support?

Mr. McINTYRE. Yes, we are trying to get the act moving.

Senator CHILES. Every year since Congress has passed the Program Information Act the committee has asked when State and local governments will be able to plug their program into the Federal assistance retrieval system. You completed the study last year and committed OMB to a schedule of action. How do we stand on that, and can State and local governments look at plugging in and getting rid of some of their consultants?

Mr. McINTYRE. Yes, I believe, as I recall, Mr. Chairman, most States have at least one access point from which interested people can get information on the various grants-in-aid programs without having to purchase terminals and gain direct access to the system. We are moving to implement the program according to the law, and according to my discussion with you almost 2 years ago now, we are expanding the information available in the system. We are trying to accommodate some of the concerns of the Congress with respect to how the grants are awarded, the geographic distribution of those grants.

But I must say to you there is one area we continue to have difficulty in, and I know you and other Members of Congress are interested in, and that is trying to provide current information as to the amount available in these various grant-in-aid programs. That is something we discussed when the authorizing legislation was passed several years ago, and quite frankly it is very difficult, if not an impossible task, to achieve and have current information available, financial information.

Senator CHILES. We will have some more questions on this for the record.

TRAVEL EXPENDITURE LIMITATION

Senator SCHMITT. Mr. Chairman, somewhat indirectly related to that is the issue of OMB's control over travel expenditures by the various agencies. Last year the Congress mandated a significant reduction in travel expenditures.

Mr. McIntyre, could you summarize for us how that effort is going for fiscal year 1980?

Mr. McINTYRE. Yes; the Congress mandated a reduction in travel of about $500 million for fiscal year 1980. We took each agency's travel, prorated against the total amount, and then allocated to each agency a proportion——

Senator SCHMITT. Based on 1979 travel?

Mr. McINTYRE. 1980.

Senator SCHMITT. You say allocated.

Mr. McINTYRE. Prorated.

Senator SCHMITT. Based on their 1980 request?

Mr. McINTYRE. Based on the amounts Congress appropriated. The proposal was to cut $500 million. We reduced total spending by $500 million.

Senator SCHMITT. And assigned to the agencies on the basis of their initial request?

Mr. WHITE. The initial request, plus we did gather more information. We went through an internal appeal.

Mr. MCINTYRE. Then we tried to allocate an amount for each agency. I think that some agencies got hit unduly. For example, in the Defense Department. It has fallen in some areas, some places, I don't think the Congress contemplated it falling. I would point out we argued against this as an unrealistic reduction in the first place. We were successful in getting the amount to be cut reduced from $750 million to $500 million. My deputy has just recently been going through the process and deciding appeals and allocating the amount of travel we expect each agency to reduce. I might ask him to comment in greater detail.

Mr. WHITE. A couple of comments, Senator. One, we have not only prorated but now are going through appeals. We have a number of written appeals. Frankly, we will not be able to honor even those we consider appropriate because the cut is so large.

Second, there are a number of areas where this causes very severe problems. Defense was mentioned. Military exercises are included in these travel budgets, and defense is such a large proportion of the total and they have to take a large cut. The FBI gets involved, the delivery of witnesses to courts. There is a whole range of these. While obviously you ought to rate priorities—and we do—the cut, again, is very large; therefore, everybody has to take some.

Senator SCHMITT. Have you requested or do you intend to request a reconsideration by the Congress in the fiscal year 1980 supplemental?

Mr. WHITE. No, but for 1981. Congress has indicated very clearly what the policy is, and for 1981 we will lay this out and hope we get what we consider a more appropriate justification.

Senator SCHMITT. Have you prepared that kind of documentation for the Appropriations Committee for 1981?

Mr. MCINTYRE. Yes.

Senator SCHMITT. It is part of your budget?

Mr. MCINTYRE. Yes.

Senator SCHMITT. I have heard some of the horror stories, and certainly in the military it is serious. I have also heard some of our international programs have been hurt considerably and work with the Saudis and other potential allies has been jeopardized.

Mr. WHITE. That is correct. Also foreign military sales.

Senator SCHMITT. Are you continually trying to reallocate based on the priorities that exist within the administration?

Mr. WHITE. Yes, we are. But as I indicated, one of our problems is basically we are at the number. So if someone now comes in with what is a legitimate request, we don't have much room.

REORGANIZATION EFFORTS

Senator SCHMITT. Have you been able to estimate yet the budgetary savings that are going to result from the reorganization efforts that you have been successful in convincing the Congress to undertake?

Mr. MCINTYRE. We have estimated those where possible on a case-by-case basis. We have not developed a total for all of the reorganization.

Senator SCHMITT. You don't have an empirical information yet based on experience.

Mr. McINTYRE. Not yet.

Senator SCHMITT. Including the Department of Energy?

Mr. McINTYRE. Including the Department of Energy.

Senator SCHMITT. One final question, and we will have some questions for the record, Mr. Chairman.

REIMBURSABLE WORK

One question is I think I have asked you on several occasions, Mr. McIntyre, and I will ask you again, have you come to any new policy decision on the question of personnel positions that relate to reimbursable funding between agencies? There is a fair amount of movement of funds between agencies where expertise exists for helping one agency do a particular specialized problem. But it is my understanding rarely, if ever, do the personnel slots move with those funds, and this is causing some holdup in agencies being able to work together.

Mr. McINTYRE. If you would give me some specific examples, I will be glad to respond to them.

Senator SCHMITT. For example, NASA is approaching, as I understand, a level of close to $300 million of reimbursable work of the Department of Energy, and they have been using their own personnel ceilings in order to undertake that work, and it is my understanding that they are just about at the limit of what they can absorb, and if that expertise in transportation and energy conservation is going to continue to be used beyond the present level, that some kind of resolution of this personnel problem is going to have to be made.

Mr. McINTYRE. Senator, that example is familiar. I don't know if it is the same example you gave me last year or not. Let me check into it and write you a letter on that.

Senator SCHMITT. Would you please.

Mr. McINTYRE. Yes, I would be glad to.

Senator SCHMITT. NASA happened to be the one I am aware of because of another committee assignment. Since I was instrumental in getting that program started, the reimbursable program in NASA, I am interested. It has matured and reached a significant level of activity. I am sure there are other agencies who can provide assistance to other agencies, but more than likely are reluctant to do it in this kind of environment. The interagency agreements are probably difficult to negotiate because everybody figures they have got their people more than allocated to other programs. I think it is an issue .we need a resolution to. I, frankly, don't have an answer for you.

Mr. McINTYRE. We do have a number of examples where agencies have been able to work out agreements. For example, EPA and the Corps of Engineers have a working relationship, and there are others like that. But I would be glad to look into it, and if there is a problem we will take care of it.

Senator SCHMITT. I don't claim there is an immediate problem, but it is my understanding from our hearings in the Commerce Committee that if the requests for assistance continue to grow, some resolution is going to have to be made, because NASA, of course, has a broader mission than that of reimbursable activities.

Mr. WHITE. May I make one comment, Senator. I think you are right. I think there is a need for resolution. Another example is the Nuclear Regulatory Commission. After Three Mile Island it had excellent response from DOE and others. I am suggesting we don't want to burden it in a way that would make us less responsible. I don't have a solution either.

Senator SCHMITT. No, but there might be one on a case-by-case basis, a formula, not a one-for-one person or dollar amount, transfer of personnel authority, but maybe some proportion of personnel authority once you reach that level. There may be some way in which that can be worked out so we can maximize the efficiency of utilizing talent in the Government for a particular urgent problem solution.

WHITE HOUSE PERSONNEL

Have you kept an eye on the number of personnel the White House is either borrowing from the agencies or having personnel sent from those agencies to the White House on detail work?

Mr. MCINTYRE. The White House keeps its own record of those just like any agency. We obviously in the budget process, review the White House budget's personnel situation like any other agency.

Senator SCHMITT. But are you able to cross correlate the personnel requirements of an agency versus those requirements that the White House imposes on that agency in terms of transfer on temporary duty?

Mr. MCINTYRE. Yes, we know when the personnel are transferred—I shouldn't say "transferred," they are really detailed—for various purposes. We know that. We have records of how many and where. We get the White House personnel records.

Senator SCHMITT. Presumably that detail imposes a burden on the agency which they had not anticipated.

Mr. MCINTYRE. Not necessarily. Sometimes it helps carry out an agency's mission.

Senator SCHMITT. Is that considered in the budget process, when various agencies ask for certain levels of staffing?

Mr. MCINTYRE. Usually. I always hate to say this because it is misinterpreted. Usually the numbers we are talking about are very small numbers when compared to an agency's total personnel ceiling or when compared to the total budget of an agency. And I think if any agency were being unfairly treated with detailees, either I would know about it, or certainly the President would know about it, because the agency head is not going to sit back and let his own responsibilities be undercut.

Senator SCHMITT. Well, it is difficult for an agency head to refuse a request of the White House, I suspect.

Mr. MCINTYRE. I am put in that position every day.

Senator SCHMITT. The White House keeps the records of these detailees?

Mr. MCINTYRE. Yes.

Senator SCHMITT. You do not.

Mr. MCINTYRE. They keep their own personnel records.

Senator SCHMITT. You do not keep the records of who is detailed?

Mr. MCINTYRE. We don't keep records of any agency's activities except our own. We get them as they are submitted as part of our budget examination process. We review expenditures, and also we make up the budget itself each year.

Senator SCHMITT. Thank you, Mr. Chairman. We will have some other questions.

Senator CHILES. Thank you.

PAPERWORK COMMISSION FOLLOWUP

I noted the GAO issued a critical audit report on OMB's followup on the Paperwork Commission recommendations. Some of the problems noted by GAO were: Top management in the agencies were not participating in the followup program; Commission recommendations were excluded from the followup; and preliminary actions often were not disclosed or taken. GAO recommended that OMB should redesign its followup program and include omitted recommendations. What is OMB's reaction to the GAO audit report?

Mr. MCINTYRE. Our office sent a letter to the General Accounting Office commenting on the GAO report. We have taken a number of steps to execute some of the recommendations and criticisms made in that report. First, we are currently redesigning and redirecting a followup program. While it has basically been our intent to do those things the GAO criticized us for not doing in our earlier efforts, we have revitalized these efforts and have assigned specific leadership to head this particular effort.

Senator CHILES. We would like to be notified on what your new recommendations will be.

Mr. MCINTYRE. All right, Mr. Chairman.

Senator CHILES. The rest of the questions we will submit to you for the record. Thank you for your appearance.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

No effective leadership in telecommunication: Office of Regulatory and Information Policy

One other concern I have with the creation of this new office is the apparent downgrading of information policy activities.

Since the elimination of the Office of Telecommunications Policy the Federal Government has looked to OMB for leadership in telecommunications policy. With the elimination of the OMB Office of Information Systems Policy, OMB's leadership in this area will certainly become even more ineffective.

According to GAO this situation is resulting in the procurement and management of Federal telecommunications facilities and services becoming diffused among many Federal organizations and we are no longer getting the most economical, efficient and effective telecommunications system.

What is OMB going to do to provide effective leadership in the field of telecommunications?

Answer:

In January 1980, OMB significantly upgraded its information policy oversight activities by establishing the Office of Regulatory and Information Policy. Because of this reorganization more resources are being devoted to the telecommunications policy function. Each of the desk officers within this new office is responsible for telecommunications oversight within an assigned agency. The Information Policy Group within the office provides coordination for policy efforts which affect numerous agencies or the entire government. More importantly, however, the new Office of Regulatory and Information Policy is giving OMB the ability to address a broad range of information policy concerns in a coordinated manner. These concerns include not only telecommunications, but also data processing, privacy, reports management, and regulatory oversight.

The proposed Paperwork Reduction Act of 1980 (S. 1411) will further enhance OMB's ability to provide effective leadership in the field of telecommunications. The Act will expand the scope of OMB oversight in telecommunications and other information policy areas. The Act will establish and clarify OMB's role as the overseer of Federal information policy. This clarification will be particularly helpful in the telecommunications area because the present structure of shared responsibilities has led to some confusion of roles. Finally, the Act will make more resources available for OMB to carry out its responsibilities through the authority to task departments and agencies making services, personnel and facilities available to carry out specific functions. OMB will be able as a result to utilize more effectively the expertise of agencies like the National Telecommunications and Information Administration to develop needed policies and provide effective leadership in telecommunications.

OMB's Executive Order (E.O. 12044) on simplifying regulations expires this June

OMB's oversight of the President's Executive Order on simplifying regulations got a lot of attention during the Committee on Governmental Affairs' markup on regulatory reform. I think that responsibility will get a lot more attention as we try to pass the bill.

As you know, the Executive Order expires this June 30 and I note in your budget submission (p. 38) that you have plans to review the question of whether it should be cancelled, extended, or modified during Fiscal Year 1981.

What are you going to do when this Executive Order expires in about two months in order to keep the momentum going?

Answer:

OMB will be working on four ways to continue agency momentum on implementing Executive Order 12044 during the next several months. First, we will be asking the President to extend the Executive Order for one year. Second, we will soon publish our second progress report on agency performance. This report is one of our most effective means of encouraging agency compliance. We identify specific agency actions that are good examples of compliance with the Order, but we also identify instances of non-compliance. Agency heads do not like to see their agency highlighted as a problem agency. The national news media, Congress, and interest groups all examine the assessments we make in our progress reports. Third, we work on a day to day basis with individual agencies to improve compliance with the Order. With the establishment of the Office of Regulatory and Information Policy, we have increased the staff overseeing agency compliance and can do more in-depth audits of agency compliance. For example, in recent months we have asked a number of agencies to do regulatory analyses (Energy, gasoline reseller-retailer pricing regulations). We discuss with agency officials both overall compliance and compliance for specific rulemakings. We also share with these agencies ideas and experiences other agencies have used in carrying out the Order. Since the last report, both Commerce and Energy have completely revised and reorganized their agency compliance efforts to strengthen them. Fourth, later this fall, we will be conducting an extensive effort seeking public comments on the effect of the Order and agency compliance with the Order. This call for public comment should reinforce agency momentum in carrying out the Order. The public comments will be used to develop recommendations to the President on the future of the Order and any future legislative actions.

President's Reorganization Program at OMB

The first draft of the OMB budget that the committee received stated the project on the President's Reorganization Program was completed. It now states that major parts of the project are completed.

What is the current status of the President's Reorganization Program at OMB?

What additional tasks remain unfinished?

Will additional reorganization proposals be submitted to Congress in the near future?

Answer:

The initial draft was submitted to the committee prior to the President's decision to seek an extension of the Reorganization Authority. The reorganization legislation passed the House and Senate in late March and was signed by the President on April 8th. This is a one-year extension of the President's reorganization authority.

Nine reorganization plans have been approved to date. These plans affected the:

- Executive Office of the President/Office of Administration
- International Communications Agency
- Equal Employment Opportunity Commission
- Civil Service Commission
- Federal Emergency Management Agency
- Employee Retirement Income Security Act
- Federal Inspector for the Alaska Natural Gas Pipeline
- International Development Cooperation Agency
- International Trade

In addition, the staff assisted in one statutorily based reorganization--the creation of the Department of Education.

OMB staff are currently working on a number of reorganization projects, including the Nuclear Regulatory Commission, a Statistical Policy Office, Selective Service Reform, the Energy Mobilization Board, the Energy Security Corporation, and Health and Human Services delivery. These plans will be submitted to the Congress as needed during this final year of the current reorganization effort.

OMB cut $422,000 in last month's budget exercises

I noticed that OMB shared in the President's budget cutting exercise last month and took a $422,000 reduction. How many positions and what programs are affected by this reduction?

How much of the reduction is in OMB's management activities?

Answer:

The $422,000 reflects reductions in personnel benefit costs, telephones, equipment, supplies, materials and furniture. No permanent positions will be affected by this cut; that total remains at 571 positions for FY 1980 and FY 1981. The $422,000 will be spread throughout all of OMB's divisions, but we do not anticipate any serious impacts on the operations of any of our divisions for the coming year.

Reorganization of OMB

Last year the committee was told that an internal reorganization study was underway at OMB and the purpose of the reorganization would be to move away from a management side of OMB and a budget side in an attempt to integrate management activities into the overall budget examination efforts.

What is the status of that reorganization effort other than the creation of the Office of Regulatory and Information Policy?

Answer:

Under my direction, an internal study was conducted early in 1979 to determine personnel requirements for OMB. Working papers were prepared during this period and an oral briefing was given but no formal written report was issued.

Recommendations from the internal study included:

- staffing OMB to handle tax credit issues and regulatory programs in an improved manner;
- revising the roles of the budget examiner into a central desk officer and integrating Management and Budget activities;
- enhancing internal communication of work priorities and management concerns;
- improving basic administrative processes.

Many of the suggestions already have been implemented or are under implementation. These include:

- regularizing the issuance of OMB directives; that is Circulars, Bulletins and Memos to Heads of Agencies;
- expanding the Spring Preview process to include longer range budget planning issues;
- enhancing personnel management within OMB through use of the Performance Review Board and Executive Resources Board;
- increasing the use of information technology to help staff handle a growing workload; and
- updating the OMB Charter and Procedures Manual.

In addition to the creation of the Office of Regulatory and Information Policy, OMB has, during the past year, created an Office of Civil Rights reporting to the Director and instituted a consolidation of the

President's reorganization staff into an Organization Studies Unit with ongoing responsibilities for management and reorganization issues.

Printing and Reproduction Expenses

According to the justification materials (p. 2), OMB was able to save approximately $600,000 in printing expenses in 1980 by "a conversion in the method of printing," resulting in a printing cost of $962,000 (instead of $1,598,000) for the Budget, Budget Appendix, Budget in Brief and Special Analysis.

What is the change in method of printing that permitted these savings?

Answer:

The Budget of the United States Government, the Budget in Brief, the Appendix and the Special Analyses for the fiscal year 1980 were printed utilizing the photocomposition system at the Government Printing Office. Printing costs were reduced and the preparation of these documents was expedited by interfacing computer data bases with the GPO photocomposition system. The major computer data base was prepared and maintained at the Government Printing Office. Tapes generated from computer data bases maintained at the Office of Administration computer facility and at the Bowne Time Sharing facility were also transmitted to the Government Printing Office for printing a part of these documents.

Are further savings possible in 1981 by changes in the method of printing or by printing fewer copies?

Answer:

No new savings are expected at this time from any additional change in printing methods. However, printing costs can always be reduced by ordering less copies of the publications.

Why is the Catalog of Federal Domestic Assistance now published three times a year? What would the savings be if this were printed twice a year? Once a year?

Answer:

In 1979 we started publishing the Catalog three times a year. The reason we did that was to satisfy one of the major requirements of Public Law 95-220. That requirement was to make program information (through the Catalog and FAPRS) more current and timely.

The law states that the Director shall prepare and publish each year a Catalog. It also states that the Director shall prepare and publish supplements to the Catalog as necessary.

In 1979 our estimated costs of printing the Catalog and 2 updates was $716,000, including printing, postage, salaries of our employees, and computer support. Each of the updates costs about $75,000 for printing and postage, with salaries and computer support remaining about the same. This means that the total cost with one update would be $641,000, and with no update, $566,000.

Low lapse rate projected (+$339,000)

OMB has requested an increase of $339,000 in 1981 because of a projected lower lapse rate or vacancy rate. Why is the lapse rate expected to be lower in 1981?

Is this a Government-wide situation for 1981?

Answer:

OMB is taking specific steps in its personnel/management area to reduce the length of time between when a vacancy occurs and when that vacancy is filled. These steps include:

- Active recruitment programs to develop a pool of candidates for jobs in the agency.
- Use of the expedited Civil Service Reform Act procedures for filling jobs.
- Use of Presidential Management Intern, Intergovernmental Personnel Act, and other personnel exchange programs.

In addition, due to tight hiring limits in other Federal agencies, OMB expects fewer staff to leave the agency in the upcoming fiscal year.

While this is not an across-the-board trend, a number of other Federal agencies expect to be in similar circumstances.

Furniture

How much is included in the 1981 budget proposal for the purchase of furniture?

How much is in the 1980 budget?

Answer:

Funds requested in object class 30 are $155,000 for FY 1980 and for FY 1981. This object class normally includes amounts available for furniture and fixtures, equipment, and books. No funds within this amount are presently earmarked for furniture, and all requests for furniture for 1980 and 1981 are expected to be met from items now on hand. The amount OMB spent on furniture and furnishings in 1979 was $37,600.

Computer support from the Office of Administration

The Office of Administration (OA) has requested an increase of $4,196,000 in 1981. How much of this increase is necessary in order to provide computer services to OMB?

How much of the 1981 base for OA is necessary to support OMB programs?

Why doesn't OMB budget for its own computer needs instead of having the bulk of its computer budget in the OA budget?

Answer:

A significant portion of the increase is related to providing computer services to OMB. However, much of the increase is of a "bookkeeping" nature and does not reflect an increased level of support.

The 1981 budget has OA budgeting for the total hardware and operational costs of supporting EOP needs because much of the costs are fixed costs of OA. We in OMB are budgeting for systems development costs because those costs are more controllable by us, rather than by OA.

The Office of Administration's 1981 request for hardware and operations is $5,581,000. Of this amount $4,820,000, or 86%, is to support OMB. The amount needed to support OMB is an increase of $840,000 from OMB's 1980 estimated cost of $3,980,000, as provided in OMB's 1980 budget. This increase is needed to reflect higher FY 1981 computer costs associated with the Federal Information Locator System and automating budget submission data.

In addition, we are requesting $1,460,000 for systems and software development.

QUESTIONS SUBMITTED BY SENATOR SCHMITT

Q. HOW MUCH IS IN THIS BUDGET FOR YOU TO USE CONSULTANTS?

A. OUR 1981 REQUEST DOES NOT INCLUDE A SPECIFIC AMOUNT FOR CONSULTANTS. CONSULTANTS, TEMPORARIES, AND PART-TIME EMPLOYEES ARE BUDGETED TOGETHER AS ONE "LUMP-SUM" AMOUNT - NON-PERMANENT PERSONNEL.

IF ONE WOULD ASSUME THAT FISCAL YEAR 1981 SPENDING FOR CONSULTANTS WILL APPROXIMATE CURRENT YEAR SPENDING RATES, LESS THAN ONE-THIRD OF THE $893,000 REQUESTED FOR NON-PERMANENT PERSONNEL WOULD BE SPENT FOR CONSULTING SERVICES. HOWEVER, ESPECIALLY WITH THE SIGNIFICANT CHANGES TAKING PLACE ON THE "MANAGEMENT" SIDE OF OMB, IT IS DIFFICULT TO VALIDLY MAKE THAT ASSUMPTION.

Q. WHAT HAVE YOU DONE TO ENCOURAGE THE AGENCIES TO REDUCE THE AMOUNT OF FEDERAL PAPERWORK?

A. WITH RESPECT TO THE FEDERAL TRADE COMMISSION, WHICH CREATES ENORMOUS PAPERWORK BURDENS FOR THE PRIVATE SECTOR, HAVE YOU DEVELOPED ANY CONCRETE RECOMMENDATIONS?

A. E.O. 12174, "PAPERWORK," WAS SIGNED BY THE PRESIDENT ON NOVEMBER 30, 1979. FOR THE FIRST TIME, THE E.O. PUTS IN PLACE A

MANAGEMENT FRAMEWORK WITHIN WHICH AGENCIES CAN MANAGE AND CONTROL PAPERWORK. EMPHASIS IS BEING PLACED ON IMPROVING INFORMATION MANAGEMENT AND AGENCIES WILL BE REQUIRED TO ENSURE MORE TOP LEVEL AGENCY ATTENTION AND PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF REPORTING REQUIREMENTS. THE ORDER HAS SEVERAL MAJOR ELEMENTS INCLUDING: A PAPERWORK BUDGET TO CONTROL THE TOTAL BURDEN IMPOSED ON THE PUBLIC; AN INFORMATION LOCATOR SYSTEM FOR IDENTIFYING DUPLICATIVE REQUESTS FOR INFORMATION; A PROVISION THAT NO NEW REPORTING REQUIREMENTS MAY BE AUTHORIZED FOR NO MORE THAN 2 YEARS; AND A PROVISION THAT INFORMATION REQUESTS BE DEVELOPED IN CONSULTATION WITH THOSE WHO WILL BE AFFECTED, WITH PARTICULAR ATTENTION PAID TO REDUCING REPORTING BURDENS ON INDIVIDUALS AND SMALL BUSINESSES.

IN 1974, THE CONGRESS ESTABLISHED THE COMMISSION ON FEDERAL PAPERWORK TO EXAMINE PAPERWORK PROBLEMS. FIVE HUNDRED TWENTY RECOMMENDATIONS WERE DIRECTED TO THE EXECUTIVE BRANCHES. TO DATE ACTION ON MORE THAN HALF HAS BEEN COMPLETED. OMB IS MONITORING AGENCY PERFORMANCE IN IMPLEMENTING THE CFP RECOMMENDATIONS.

A 1973 AMENDMENT TO THE TRANS-ALASKA PIPELINE AUTHORITY ACT TRANSFERRED REPORTS CLEARANCE AUTHORITY FOR THE INDEPENDENT REGULATORY COMMISSIONS FROM OMB TO THE GENERAL ACCOUNTING OFFICE. THEREFORE, OMB HAS NO CONTROL OVER THE REPORTING BURDEN FTC LEVIES. S. 1411 (H.R. 6410), CURRENTLY UNDER CONSIDERATION BY THE CONGRESS, WOULD RESTORE SOME AUTHORITY OVER THE REPORTING REQUIREMENTS OF INDEPENDENT AGENCIES TO OMB.

Q. HAVE YOU KEPT AN EYE ON THE NUMBER OF PERSONNEL THE WHITE HOUSE IS EITHER BORROWING FROM THE AGENCIES OR HAVING PERSONNEL SENT TO THE WHITE HOUSE ON DETAIL?

A. WOULD YOU SUBMIT FOR THE COMMITTEE'S RECORDS THE NUMBER OF PERSONNEL DETAILED TO THE WHITE HOUSE OR ANY OF ITS SUBSIDIARY OFFICES?

A. WE DO NOT KEEP RECORDS ON THE NUMBER OF DETAILEES ASSIGNED TO THE WHITE HOUSE. HOWEVER, WE HAVE BEEN ADVISED BY THE WHITE HOUSE OFFICE THAT THERE WERE 89 DETAILEES AT THE WHITE HOUSE AS OF MARCH 31, 1980.

Q. WE USED TO HEAR ALOT ABOUT THE SIZE OF THE WHITE HOUSE STAFF. YOU WILL AGREE WILL YOU NOT THAT IT IS MUCH LARGER THAN IT WAS IN 1976?

A. I CANNOT AGREE THAT THE WHITE HOUSE STAFF IS LARGER NOW THAN IT WAS IN 1976. THE NUMBER OF FULL-TIME PERMANENT POSITIONS AUTHORIZED FOR THE WHITE HOUSE IN 1976 WAS 485, AND FOR 1981. IS 351, A DECREASE OF 134 AUTHORIZED POSITIONS.

UNANTICIPATED NEEDS

Senator CHILES. On unanticipated needs, I think we can do all that for the record.

[The information follows:]

Congress recognized in 1940 the need of the President to have limited funds available to meet unplanned and unbudgeted exigencies that may arise from time to time. In 1975 the Congress changed the account title from "Emergency Fund for the President" to "Unanticipated Needs" and reduced the appropriation from $1,000,000 to $500,000. Since 1975, however, the appropriation has been restored to $1,000,000 each year. The fiscal year 1981 budget request for the President's Unanticipated Needs appropriation is again $1,000,000.

Allocations made in 1979 to the Council on Wage and Price Stability and the newly established National Consumer Cooperative Bank exemplify the President's need for available funds to deal swiftly and effectively with sudden emergencies and unforeseen problems. I am sure you will agree with me, Mr. Chairman, that without these funds many emergency program needs could not be met.

To date in fiscal year 1980 there have been allocations from this fund to the Council on Wage and Price Stability, the U.S.-Japan Economic Relations Group, and the President's Commission for a National Agenda for the Eighties. These allocations total $550,000.

UNANTICIPATED NEEDS

The Congress has provided this appropriation to the President for a number of years. How much of the funds have been used this year and what have they been used for?

Answer. Of the one million dollars appropriated for 1980, to date $550,000 has been allocated. These allocations have been made to the:

U.S.-Japan Economic Relations Group—$200,000—for expenses necessary to the operation of the Group.

President's Commission for a National Agenda for the Eighties—$250,000—for travel, space, equipment, printing, and other support costs associated with the Commission.

Council on Wage and Price Stability—$100,000—for expenses of the Pay and Price Advisory Committees.

Mr. MCINTYRE. Mr. Chairman, we will be glad to give you a copy of our response to the GAO with respect to our efforts to deal with the followup on the Federal Commission on Paperwork.

Senator CHILES. Very good.

[The information follows:]

March 3, 1980

Honorable Elmer B. Staats
Comptroller General of
 the United States
General Accounting Office
Washington, D. C. 20548

Dear Elmer:

I am sending you my comments on the draft GAO report on OMB follow-up of the recommendations of the Commission on Federal Paperwork (Code 009900) because of your sustained, personal interest in the goals and objectives of the Commission.

The Commission on Federal Paperwork was established in recognition of broad complaints about the excessive burden of paperwork imposed on the public by the Federal Government. Excessive paperwork burden may be seen as a consequence of many specific problems and shortcomings in agency programs, but fundamentally the cause is the attitude and approach throughout government to the management of public reporting requirements and other information resources.

In its wide ranging work, the Commission identified many specific, worthwhile corrective actions. We applaud the contribution that the Commission made and we recognize that there is much to be done to complete the work begun by the Commission.

But a consistent theme in all the work of the Commission is a concern that once these specific problems are corrected, they stay corrected. The only way to make sure that the same problems do not spring up again like weeds mown down is to put in place a sound management process. We have taken as a high priority the long term management process implied in all the Commission's work. The draft report should emphasize the need to establish a long term management process that can prevent the return of the problems and abuses identified by the Commission. I believe that the report could be improved greatly if it were modified to include recognition of this need and our substantial efforts to deal with it.

In accord with the high priority we have given to the long term management process, there have been fundamental modifications in the Federal Government's approach to the management of information as a resource:

-Executive Order 12044, Improving Government Regulations, is changing the rulemaking process in ways that the Commission recommended to lessen paperwork burden. These changes include greater involvement of interested parties, longer comment periods, sunset review of existing regulations, and more consistent use of plain, easy to understand language.

-The President's Reorganization Project has resulted in significant realignments of functions that have reduced fragmentation and simplified relationships in ways that have helped to reduce paperwork burdens. For example, consolidation of various energy data systems in the new

Department of Energy was an important factor in reducing the existing reporting burden by 5,000,000 hours.

-We have reorganized relevant functions at OMB, combining responsibility for paperwork reduction with that for regulatory policy and information policy.

-Based on study of the Commission's reports and our experience in the first two years of the President's paperwork reduction program, we have developed a comprehensive, new system that we regard as the real beginning of managing information as a resource. This system is expressed in the President's November 1979 Executive Order 12174, Paperwork, and regulations we proposed in January 1980 to implement the Executive Order. These regulations would replace existing OMB guidance on the Federal Reports Act. This system will initiate planning and budgeting of information collection from a resource allocation viewpoint, require examination of how information is used once collected, establish a Federal Information Locator System, strengthen the reports clearance process by placing more responsibility on agencies and putting control points earlier in the clearance process, and require that agency responsibility for paperwork control be at a high level, independent of program operating responsibility, and able to approve, deny, or modify proposed forms.

-We have also supported legislation to unify responsibility for paperwork control in OMB, eliminate exemptions to that control, and further strengthen the power of that control.

The intention of this new system is to develop and institutionalize consistent policy level involvement in agency reports management. The draft GAO report cites lack of involvement by top agency managers as a problem in implementing Commission recommendations. In fact, that is just one specific aspect of the fundamental problem of ineffective agency management of paperwork and information.

Although we have made fundamental system changes our first priority, we have moved ahead on individual Commission recommendations. There has been significant progress, although the draft report does not recognize this. We are not by any means finished, however, and we are not ourselves satisfied with the pace or resourcefulness of agency efforts. We originally expected to complete follow-up by the end of our two-year statutory reporting obligation. As you noted when testifying before Congressman Brooks on February 7, additional time is necessary to complete the job. This is a consequence both of the extent of the Commission's recommendations and inadequate existing processes for managing information resources. We recognized this and expressed our continuing commitment to effective follow-up in our proposed paperwork control regulations (1370.7(f)). We have also endorsed legislation to extend this responsibility.

The draft report includes many assertions and conclusions about individual CFP recommendations. We believe this is premature. We have not rendered final decisions on any recommendations. To dispute the status of particular recommendations in advance of such an assessment would distract from the main task of reforming Federal paperwork management and reducing burdens. We will, however, use specific information in the draft report as a constructive contribution to our task. We will take remedial action where we find this information to be accurate.

We do have comments on the specific recommendations for the OMB Director in the conclusion of the draft report.

1. We have taken steps to augment resources and increase the level of effort devoted to CFP recommendations. We intend this oversight and follow-up to continue to be integrated with other paperwork control, regulatory policy, and information management responsibilities by our desk officers. In our view, a separate staff with exclusive responsibility for CFP recommendations would accomplish less in the long run.

2. Securing effective participation of agency top management has been our objective for some time. It is the reason for our giving top priority to overall management system reforms. We concur with the principle of assigning lead responsibility for multi-agency recommendations. Our plans, discussed with GAO staff, have always provided for disclosure of implementing actions in the wrap-up at the end of the statutory reporting period. These actions will be specified in subsequent status reports.

3. We will continue our practice of obtaining new or revised agency responses to recommendations whenever our review (including consideration of the draft GAO report) indicates insufficient development or inadequate response.

4. The exclusion from our follow-up process of recommendations directed to the Congress was done with the knowledge of GAO staff. It was based on the concept of separation of powers. We are willing to reevaluate our approach and consider development of specific, appropriate executive branch actions.

5. Our plans for follow-up, developed with knowledge and consultation of GAO staff, called for descriptive assessment of the disposition of each recommendation (specific actions taken, reasons for rejection, alternatives considered, etc.) in the report at the end of the statutory reporting period. We have not intended that the summary status listings we have published on an interim basis be a complete accounting of actions taken. Such a disclosure is called for, and will be the basis of status reports during the period of our extended oversight responsibility.

With regard to the recommendations for the Congress in the conclusion of the draft report, we have endorsed, in our testimony, on H.R. 6410, an extension of OMB's two-year statutory responsibility for follow-up of the Commission's recommendations. Also, as noted in 4. above, we will reevaluate our approach to Commission recommendations directed to the Congress.

Our position is precisely that of the Paperwork Commission. You will recall how Frank Horton summed it up in his letter to President Carter delivering the Final Summary Report:

> "In essence, we seek three things:
>
> 1. A substantial reorganization of Government administrative and management machinery which affects the Federal paperwork process;
>
> 2. A new philosophy of Service Management so that laws, rules and regulations are made in a context of true consultation and participation with the people; and
>
> 3. A continuation and expansion of effort to cut paperwork which has already been mounted by the Administration."

Thank you for the opportunity to comment on the draft report. I want to assure you that Jim Tozzi and I have a strong personal commitment to sustained, effective follow-up of the Commission recommendations as an essential and integral component of our overall effort to cut Federal paperwork.

Sincerely,

Signed/Wayne G. Granquist

Wayne G. Granquist
Associate Director for
Management and Regulatory Policy

Office of Federal Procurement Policy

STATEMENT OF KAREN WILLIAMS, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

PREPARED STATEMENT

Senator CHILES. The committee will now receive testimony from the Office of Federal Procurement Policy regarding its request. We are pleased to have Ms. Karen Williams, the Administrator of the Office of Federal Procurement Policy, with us to present their request.

Ms. Williams, we will take your statement in full and put it in the record, if you could briefly highlight.

[The statement follows:]

67-790 0 - 80 - 4

Statement of Karen Hastie Williams

For fiscal year 1981, we had originally requested $2.7 million for the operation of OMB's Office of Federal Procurement Policy (OFPP) and its adjunct, the Federal Acquisition Institute (FAI). It was 10% under our FY 1980 request. In the March revisions we have reduced our funding needs by an additional $39,000 to a new aggregate of $2,661,000. This is $339,000 under our FY 1980 request.

As the father of the enabling legislation, you are aware that OFPP was created by Public Law 93-400 in 1974. The office was reauthorized by P.L. 96-83 in 1979. With the concurrence of OMB, OFPP has directive authority over Federal procurement policy, procedures, and forms, and veto authority over agency regulations. The FAI, begun in 1977, is the focal point for planning and coordinating programs for 130,000 Federal employees in the procurement workforce in terms of career development, education, training and research. I recognize that you have long been an advocate for improved training of procurement personnel. I share your belief that the elimination of fraud and abuse in Government procurement will be greatly aided by improved training and educational opportunities for the current work force.

Our current budget request compares with prior years, as follows:

($000)

	FY 78	FY 79	FY 80	FY 81
OFPP	1,840	1,924	2,000	1,774
FAI	1,000	2,116	1,000	887
Total	2,840	4,040	3,000	2,661

Full-time or equivalent personnel levels have been or will be as follows:

	FY 78	FY 79	FY 80	FY 81
OFPP	30	25	25	25
FAI		25	20	20

Staff support will be critical to my success at OFPP. I have started with the existing resources of a highly professional staff at OFPP. It is my plan to add to this staff several new procurement and management experts to fill key positions in the development of the UPS. The work of the OFPP staff will be supplemented by the analysis of numerous executive interagency task forces. Public hearings and informal consultations with Congress, labor, industry, and other private sector representatives will provide further views for consideration in the development of procurement policies.

Our responsibility to bring order and better management techniques to the Federal Government's $100 billion a year procurement process is an imposing one. Our progress and results to date have been substantial. As you are aware, we have initiated many new procurement policies, coordinated the implementation of existing procurement policies and practices, and have taken the lead in development of a single set of acquisition regulations. For the convenience of the committee, let me highlight a few examples:

- The development of a single acquisition regulation is near completion. Under our leadership and direction, DOD and GSA have cooperated in the drafting of a rational, simplified and uniform regulation. This FAR will be an integral part of the UPS. It will be useful in reducing the onerous paperwork burden and multiplicity of sometimes conflicting regulations and complex procedures that now plague Government contractors and the Federal agency procurement community.

- We have set in motion a Government-wide computer-based information system for collecting, developing, and disseminating procurement data for use by the Congress, and, in particular, Committees like yours, the executive branch, and the private sector. This Office will continue policy guidance and oversight for the system. GSA is now the executive agent responsible for operating the system.

- We have developed Government-wide policy and drafted the FAR sections for implementing the commercial acquisition and distribution program. This included institution of revisions to the Federal specifications system. Savings in the first 15-month period of this program exceeded $15 million.

- This Office issued proposed policy and regulations and guidance for agencies to implement subcontracting provisions as required by P.L. 95-507. The organization and functions of the "Office of Small and

Disadvantaged Business Utilization" were also included. We participated with the SBA in developing guidance for establishing contract award goals for minority and small business firms.

- We continued our efforts as the focal point and implemented requirements under the Contract Disputes Act of 1978 (P.L. 95-563). This included a proposed new contract disputes clause, uniform rules of procedure and position allocations for Boards of Contract Appeals.

- A comprehensive revision of the guidelines for decisions between in-house performance and contract provisions of goods and services, including development of a handbook for cost comparisons under OMB Circular A-76, was completed. We are continuing to evaluate the appropriateness of applying the cost comparisons of A-76 to the conduct of R&D.

- We continued an aggressive program with both industry and Federal agencies to ensure implementation of OMB Circular A-109 for Major System Acquisitions. We have moved toward further integration of reviews for A-109 compliance with the long-established budget review process.

- The FAI has developed guidelines for agency use in establishing career programs. Specific functional career guides containing career progression patterns and recommended training requirements will be issued as supplements. We have nearly completed the development of uniform training objectives for basic knowledge procurement courses which can be used for course development and evaluation.

  In progress, is a joint FAI/OPM/interagency project to revise the current GS-1102 Contract and Procurement classification standards, which include contracting officers. The Institute has developed "exportable" training packages for on-site use nationwide in contract law and small purchases and has under development videotape training packages on OMB Circular A-109; OMB Circular A-76; Ethics: Prevention of Fraud and Corruption; Cost and Price Data; Acquisition and Distribution of Commercial Products; and Public Law 95-507.

In education, we have expanded the availability of degree programs from seven universities in 1978 to 25 universities currently. These degree programs will provide a more highly qualified recruiting resource and provide academic programs for the incumbent work force.

Research initiatives include a project currently underway on the role and authority of the contracting officer which will include the identification of qualification standards for contracting officers. It is our intent to upgrade and integrate the role of the contracting officer in the conduct of agency procurement affairs which I know you foster. In addition to sponsoring and coordinating numerous research projects for OFPP, the Institute is coordinating research efforts between the Department of Defense and the civil agencies to eliminate duplication of studies and efforts.

The thrust of our effort for fiscal year 1981 and beyond will be to continue to focus on improving the economy, efficiency, and effectiveness with equity in the procurement of property and services by the executive agencies. We will also give attention to eliminating fraud, waste, and mismanagement in the procurement process by improving the training of the procurement work force.

Our efforts in this area will include, through the FAI, the development of training materials for procurement personnel, Inspectors General and auditors. Emphasis will be to sensitize and better prepare them for detecting the often subtle instances of fraud waste and other abuses in the procurement process and to enhance the overall professionalism of the current workforce. Normally when budget cuts are made it is usually personnel training that suffers first. This is not so with respect to the FAI. We will meet the statutory requirement that no less than one-third of our appropriation will be spent on the FAI.

Efforts underway this year which will continue into fiscal year 1981, respond fully to the mandate established for the Office by the Office of Federal Procurement

Policy Act Amendments of 1979 (P.L. 96-83). Our immediate emphasis and impetus will be on the following items:

-- the development of a proposed uniform procurement system (UPS) and development of a central management system to implement and enforce the UPS. Preparation will begin of recommended changes in legislation related to procurement, standard contracts and contract language, and a review of the existing statutory base.

-- OFPP will continue to monitor aggressively the implementation of existing policies and offer guidance and active support to the executive agencies in the implementation of policies such as A-109, A-76 and the small and minority business requirements of P.L. 95-507.

In FY 1981 the FAI, which is now located within the Office and directed by the Administrator, will concentrate on training and career development programs to improve the current workforce. In concert with OFPP, the Institute will develop training materials, in coordination with the agencies, to assure uniform implementation of OFPP policies. In addition, we will promote and conduct research in procurement policies, regulations, procedures, and forms, through the Institute.

Mr. Chairman, this concludes my prepared remarks. If you have any questions on OFPP or need clarification, I will be happy to respond.

Ms. WILLIAMS. Thank you, Mr. Chairman.

For fiscal year 1981, we had originally requested $2.7 million for the operation of OMB's Office of Federal Procurement Policy and its adjunct, the Federal Acquisition Institute. It was 10 percent under our fiscal year 1980 request. In the March revisions we have reduced our funding needs by an additional $39,000 to a new aggregate of $2,661,000. This is $339,000 under our fiscal year 1980 request.

Mr. Chairman, our responsibility is to bring order and better management techniques to the Federal Government's $100 billion a year procurement process. Our progress and results to date have been substantial, but much remains to be done. Thus, our effort for fiscal year 1981 and beyond will be to continue to focus on implementing existing policies and to build on these reforms in the development of a uniform procurement system to improve the economy, efficiency, and effectiveness, with equity, in the procurement of property and services by the executive branch.

OFPP will continue to respond fully to the mandate established for the Office of Federal Procurement Policy in the reorganization legislation. Our immediate emphasis will be on the following:

OFPP will develop a proposed uniform procurement system and develop a central management system to implement and enforce the UPS. Preparation will begin in fiscal year 1981 of recommended changes in legislation related to procurement, standard contracts and contract language, and review of the existing statutory base.

OFPP will continue to monitor aggressively the implementation of existing policies and offer guidance and active support to the executive agencies in the implementation of policies such as A–109, A–76 and the small and minority business requirements of Public Law 95–507.

OFPP will also give attention to eliminate fraud, waste, and mismanagement in the procurement process by improving the training of the procurement work force. Our efforts in this area will include, through the FAI, the development of training materials for procurement personnel, Inspectors General, and auditors. Efforts will be to sensitize and better prepare these individuals for detecting the often subtle instance of fraud, waste, and other abuses in the procurement process and enhance the overall professionalism of the current work force.

OFPP will also develop training in coordination with the executive agencies to assure uniform implementation of OFPP policy. Normally when budget cuts are made it is usually personnel training that suffers first. This is not so with respect to OFPP. We will meet the statutory requirement that no less than one-third of our appropriation will be spent on the FAI and its work force training efforts.

Mr. Chairman, I would conclude by saying OFPP will continue to work closely with the Congress in development of a uniform procurement system. We have a vigorous task. We have less than 6 months remaining in the time left to submit our proposal to the Hill, as mandated last year. We are working vigorously to meet that schedule, and I will continue to keep the Congress advised as to our progress.

Senator CHILES. Thank you very much. You certainly have an imposing task ahead under the new OFPP statute, the creation of a uniform procurement system. I am pleased to hear you have scheduled a public hearing on that proposal next week.

We have a number of questions, many of which you have touched on in your statement. I think these questions basically go to oversight, and I am going to submit them to you for the record.

[The following questions were not asked at the hearing but were submitted to the OFPP for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

UNIFORM PROCUREMENT SYSTEM PROPOSAL

Q. YOU HAVE AN IMPOSING TASK AHEAD OF YOU UNDER THE NEW OFPP STATUTE -- THE CREATION OF A UNIFORM PROCUREMENT SYSTEM. I WAS PLEASED TO HEAR THAT YOU SCHEDULED A PUBLIC HEARING ON THAT PROPOSAL NEXT WEEK.

I COULDN'T HELP BUT NOTICE THAT YOUR BUDGET REQUEST SHOWS A $339,000 DECREASE FOR OFPP BELOW THE 1980 LEVEL. IN YOUR ESTIMATION, DO YOU HAVE SUFFICIENT RESOURCES TO CARRY OUT ITS MANDATES INSOFAR AS GRADE LEVELS AND NUMBERS OF PERSONNEL ARE CONCERNED? IF NOT, HOW DO YOU PROPOSE TO SECURE THE NECESSARY PERSONNEL TO MEET YOUR RESPONSIBILITIES?

A. I CERTAINLY AGREE WITH YOUR CHARACTERIZATION OF THE TASK.

IN TERMS OF RESOURCES, OMB DIRECTOR JIM McINTYRE HAS BEEN MOST COOPERATIVE AND HAS AGREED TO GIVE OFPP A PARTIAL EXEMPTION FROM THE CURRENT FREEZE IN PERSONNEL HIRING. AS YOU MAY KNOW, THE OFFICE HAS OPERATED DURING THE PAST YEAR UNDER A DE FACTO FREEZE AND, AS A RESULT, SEVERAL KEY POSITIONS ARE VACANT. I BELIEVE THAT WITH ALL OR MOST OF THESE VACANCIES FILLED, THERE WILL BE LITTLE NEED FOR CHANGES IN AUTHORIZED GRADE LEVELS OR NUMBERS OF PERSONNEL.

I WANT TO EMPHASIZE, MOREOVER, THAT I INTEND TO CONTINUE OFPP'S PAST RELIANCE ON PERSONNEL, TEMPORARILY DETAILED BY THEIR AGENCIES, TO HELP US IN TACKLING SPECIFIC PROGRAMS AND PROJECTS. THIS PRACTICE WILL BE ESPECIALLY NECESSARY IN THE DEVELOPMENT OF THE UPS PROPOSAL AND IS ALREADY UNDERWAY.

Q. NO OVERALL SYSTEM OF PROCUREMENT BY THE FEDERAL AGENCIES CAN BE ESTABLISHED WITHOUT A NEED FOR A CHANGE IN FEDERAL PROCUREMENT STATUTES, AND HENCE THE REGULATIONS. THERE ARE APPROXIMATELY 4,000 PROVISIONS RELATING TO PROCUREMENT THAT ARE SCATTERED THROUGHOUT THE UNITED STATES CODE. THIS UNCOORDINATED DISTRIBUTION OF PROCUREMENT STATUTES IS DETRIMENTAL TO EFFECTIVE, EFFICIENT, AND ECONOMICAL PROCUREMENT. HOW THEN DO YOU PROPOSE TO TACKLE THE MASSIVE PROBLEM OF ANALYSIS, SINCE THE SOLUTION IS VERY IMPORTANT TO THE EFFICACY OF PROCUREMENT REFORMS IN THE UNIFORM PROCUREMENT SYSTEM, FEDERAL STATUTORY BASE, AND FEDERAL ACQUISITION REGULATIONS?

A. THE LISTING OF APPROXIMATELY 4,000 STATUTES WHICH IMPACT PROCUREMENT WAS COMPILED BY THE COMMISSION ON GOVERNMENT PROCUREMENT IN 1972. THIS LIST WILL BE UPDATED TO ADD ANY NEW PROVISIONS ENACTED SINCE THAT TIME. WE ARE EXPLORING THE POSSIBILITIES FOR ASSISTANCE

FROM AREA LAW SCHOOLS IN THIS PHASE OF THE PROJECT. NOT ALL OF THOSE STATUTES, OF COURSE, HAVE AN EQUAL IMPACT ON THE PROCUREMENT PROCESS. APPROXIMATELY 50 ARE CONSIDERED SIGNIFICANT -- AND THESE WERE THOROUGHLY ANALYZED AND RECOMMENDED FOR REPEAL OR AMENDMENT IN CONNECTION WITH PRIOR EFFORTS TO ENACT A SINGLE PROCUREMENT STATUTE. THIS ANALYSIS, CAN BE QUICKLY UPDATED, AND USED TO DEVELOP A PROPOSED NEW STATUTORY BASE FOR FEDERAL PROCUREMENT. MY COUNSEL IS ALREADY WORKING ON THE ESTABLISHMENT OF AN INTER-AGENCY TASK FORCE OF LEGAL EXPERTS TO ASSIST US IN THIS EFFORT.

Q. WHAT IS YOUR DEFINITION OF THE UPS AND DEFINE ITS RELATIONSHIP TO THE FEDERAL ACQUISITION REGULATION (FAR) SYSTEM?

A. WE HAVE DEVELOPED A WORKING DEFINITION OF THE UPS WHICH WE WILL BE DISCUSSING WITH THE AGENCIES AND OTHERS. THAT DEFINITION, THOUGH PRELIMINARY, REFLECTS, WE BELIEVE, THE EXPRESSED VIEWS OF THE CONGRESS AS REFLECTED IN P.L. 96-83. BRIEFLY, WE SEE THE UPS AS A COMPREHENSIVE GOVERNMENT-WIDE SYSTEM CONCERNED WITH THE PROCESS FOR (1) DETERMINING NEEDS FOR GOODS AND SERVICES; (2) CONTROLLING THE ACQUISITION, SUPPLY, MANAGEMENT AND DISPOSITION OF GOODS AND SERVICES REQUIRED BY THE EXECUTIVE BRANCH; AND (3) PROCURING GOODS AND SERVICES UNDER FEDERAL GRANT AND ASSISTANCE PROGRAMS. THE PRINCIPAL PURPOSE OF THE SYSTEM WOULD BE TO ASSURE RESPONSIVENESS TO THE USER BY EMBRACING IN A SINGLE SYSTEM ALL FACTORS THAT DIRECTLY AFFECT THE ECONOMY, EFFICIENCY, AND EFFECTIVENESS OF PROCUREMENT WITH EQUITY. THE SYSTEM WOULD BE COMPRISED, IN OUR VIEW, OF THE FOLLOWING KEY COMPONENTS: (1) AN AUTHORITY STRUCTURE (STATUTES, POLICIES, REGULATIONS AND PROCEDURES); (2) GOVERNING PRINCIPLES; (3) A SERIES OF TAILORED PROCUREMENT PROCESSES; AND (4) PHYSICAL RESOURCES NECESSARY FOR IMPLEMENTING AND MAINTAINING THE SYSTEM (WORKFORCE, ORGANIZATION, FACILITIES AND EQUIPMENT). WHILE THIS DEFINITION IS LIKELY TO EVOLVE IN SOME OF ITS PARTICULARS OVER THE NEXT SEVERAL MONTHS, I THINK THAT IT PROVIDES A USEFUL CONCEPTUAL BASIS UPON WHICH TO BEGIN THE FORMULATION OF A UNIFORM PROCUREMENT SYSTEM PROPOSAL.

WITH REGARD TO THE RELATIONSHIP BETWEEN THE UPS AND THE FAR SYSTEM, WE VIEW THE LATTER AS AN IMPORTANT ELEMENT OF THE UPS. AS YOU KNOW, THE FAR PROJECT IS INTENDED TO BRING TOGETHER IN A SINGLE, CLEARLY WRITTEN AND UNDERSTANDABLE REGULATION, THE SEVERAL PRIMARY REGULATIONS (DAR, FPR AND NASA PR) THAT GOVERN FEDERAL ACQUISITION TODAY. WHILE THE FAR WILL HELP TO ACHIEVE MANY OF THE OBJECTIVES OF P.L. 93-400, AS AMENDED, IT CANNOT, OF COURSE, TAKE THE PLACE OF THE IN-DEPTH ANALYSIS AND STRUCTURING OF THE ENTIRE PROCUREMENT PROCESS REQUIRED BY P.L. 96-83.

Q. WHAT ACTIONS DO YOU CONTEMPLATE TAKING TO ASSURE MEETING THE TARGET DATE FOR SUBMISSION OF YOUR PROPOSED UPS TO THE CONGRESS?

A. THE PRINCIPAL ACTIONS THAT I WILL TAKE, IN ADDITION TO THOSE MENTIONED IN RESPONSE TO YOUR FIRST QUESTION ON THIS SUBJECT, ARE TO (1) GET THE NECESSARY INTERAGENCY TASK FORCES CHARTERED, ESTABLISHED, AND WORKING: AND (2) MAINTAIN STRICT ADHERENCE TO OUR PROJECT SCHEDULE -- A SCHEDULE WHICH IS EXTREMELY VIGOROUS AND SIMPLY WILL NOT PERMIT ANY SIGNIFICANT DELAYS IN MEETING MILESTONES. MY ATTENTION, AND THAT OF MY ENTIRE SENIOR STAFF, WILL BE FOCUSED ON THIS PROJECT DURING THE COMING MONTHS. CONSTANT MONITORING OF PROGRESS ON MY PART AND THE EARLY AND CONTINUOUS INVOLVEMENT OF AGENCIES AND THE PUBLIC DURING THE PROPOSAL DEVELOPMENT PROCESS THE NEXT SEVERAL MONTHS SHOULD HELP TO ASSURE THAT NO UNFORESEEN OBSTACLES TO OUR SCHEDULE ARE ENCOUNTERED.

Q. WILL YOU BE WORKING WITH CONGRESS PRIOR TO SUBMITTING THE UPS?

A. YES. AS INDICATED IN MY ORAL TESTIMONY I WILL BE CONSULTING REGULARLY WITH THE CONGRESS AND KEY LEGISLATIVE STAFF PRIOR TO SUBMITTING THE UPS.

Q. WHAT REGULATIONS, OTHER THAN THE ACQUISITION REGULATIONS REPRESENTED BY THE FAR, DO YOU ENVISION BEING INCORPORATED IN THE UPS?

A. I INTEND TO SPECIFICALLY CHARGE EACH OF THE INTERAGENCY TASK FORCES WITH THE IDENTIFICATION OF SUBJECT AREAS WHICH, IN THE UPS, WILL REQUIRE REGULATORY TREATMENT. WHILE I MUST AWAIT THE RECOMMENDATIONS AND PROPOSALS OF THOSE TASK FORCES IN THIS REGARD, I CAN ENVISION, CERTAINLY, THE NEED, IN THE UPS, FOR (1) PROPERTY MANAGEMENT REGULATIONS, (2) TRANSPORTATION REGULATIONS, AND (3) REGULATIONS FOR OTHER FUNCTIONAL AREAS -- IN ADDITION TO THOSE NECESSARY IN THE ACQUISITION AREA.

Q. HOW WILL THE PRESIDENT'S DIRECTION ON THE FORMATION OF A NATIONAL SUPPLY SYSTEM OR A NATIONAL SUPPLY POLICY BE ADDRESSED IN THE UPS TO CONSOLIDATE ALL OF THESE PROCUREMENT-RELATED ACTIVITIES AND TO ELIMINATE DUPLICATION?

A. IN SIGNING P.L. 96-83, THE PRESIDENT NOTED THAT ITS REQUIREMENT FOR OFPP TO DEVELOP A UNIFORM PROCUREMENT SYSTEM HAD THE EFFECT OF REPLACING THE NATIONAL SUPPLY SYSTEM PROJECT.

WE INTEND, IN THE UPS PROJECT, TO ADDRESS THE PROBLEMS ASSOCIATED WITH FEDERAL SUPPLY PROCESSES AS SYSTEMIC PROBLEMS -- REQUIRING COMPREHENSIVE TREATMENT IN THE CONTEXT OF THE OVERALL PROCUREMENT PROCESS.

CONSEQUENTLY, WE WILL BE LOOKING AT SUPPLY (INCLUDING ITS ORGANIZATIONAL AND OTHER CHARACTERISTICS) NOT IN ISOLATION BUT AS AN INTEGRAL ELEMENT OF THE PROCUREMENT PROCESS. IT IS IN THIS FASHION THAT WE BELIEVE THE NATIONAL SUPPLY SYSTEM GOALS AND OBJECTIVES WHICH, INCIDENTALLY, WILL BE INCORPORATED IN THE UNIFORM PROCUREMENT SYSTEM, CAN BEST BE ACHIEVED. AMONG THOSE GOALS ARE THOSE OF AVOIDING OR ELIMINATING UNNECESSARY OVERLAPPING OR DUPLICATION OF PROCUREMENT AND RELATED ACTIVITIES.

FRAUD AND ABUSE IN THE FEDERAL PROCUREMENT SYSTEM

Q. THERE IS INCREASING NEED TO ROOT OUT UNETHICAL PRACTICES, FRAUD, ABUSE, AND MISMANAGEMENT IN FEDERAL ACTIVITIES. WHAT PLANS DO YOU HAVE, IN CONCERT WITH OMB, TO ADDRESS THIS ISSUE, PARTICULARLY WITH RESPECT TO PROCUREMENT ACTIVITIES? WILL THIS PROBLEM BE ADDRESSED IN THE UNIFORM PROCUREMENT SYSTEM?

A. OFPP, IN CONCERT WITH OTHER ELEMENTS OF OMB, IS MAKING A FOUR PRONGED APPROACH:

- THE FIRST IS PROPER TRAINING, DEVELOPED THROUGH THE FAI, FOR PROCUREMENT AND RELATED PERSONNEL. MORE TRAINING IS NEEDED IN STANDARDS OF CONDUCT, AND PREVENTION OF WASTE AND FRAUD. TO ADDRESS THIS NEED, OFPP HAS DEVELOPED AND ISSUED A PREVENTION OF WASTE AND FRAUD TRAINING PROGRAM FOR PROCUREMENT PERSONNEL. OFPP HAS RECEIVED OVER 50 REQUESTS FROM AGENCY MANAGERS FOR THE VIDEO-TAPE AND TRAINING MANUALS. THE FAI WILL ENSURE THAT PREVENTION OF WASTE AND FRAUD WILL BE ADDRESSED AS PART OF OTHER TRAINING. IN ADDITION, WE ARE DEVELOPING TRAINING PROGRAMS FOR AUDITORS, INVESTIGATORS AND OTHER PERSONNEL TO HELP THEM SPOT WASTE AND FRAUD WHICH IS OFTEN SUBTLE AND DIFFICULT. OUR BEST DEFENSE IS A WELL TRAINED AND MOTIVATED WORK FORCE WITH HIGH ESPRIT DE CORPS -PEOPLE WHO FEEL THEY ARE "UNTOUCHABLE" BY THOSE THAT WOULD CORRUPT THE SYSTEM.

- SECOND, WE MUST IMPROVE AGENCY REVIEW AND MONITORING OF ONGOING ACQUISITION ACTIVITIES. WE WILL MONITOR AGENCY ACTIONS IN THIS AREA AND PROVIDE CRITERIA AND GUIDANCE IN HOW A REVIEW SHOULD BE CONDUCTED. WE HAVE DONE THIS FOR END OF YEAR SPENDING AND FOR USE OF CONSULTANT SERVICES AND WE INTEND TO DO MORE.

- THIRD, IN THE UPS, INCLUDING THE FAR, WE WILL PROVIDE FOR THE PROPER CHECKS AND BALANCES IN THE SYSTEM. WE MUST IMPROVE THE SUPERVISION, CLEARANCE PROCEDURES AND UPPER LEVEL REVIEW OF

ACTIONS THAT PROVIDE THE MOST OPPORTUNITY FOR ABUSE SUCH AS SOLE SOURCE, AND REPETITIVE AWARDS. WE WILL ALSO PROVIDE GUIDANCE, INTERNAL CONTROLS AND OTHER SYSTEMS OF VERIFICATION AND CHECKS.

O AND WE WILL IMPROVE THE SYSTEM SO AS TO (1) PROVIDE FOR MORE COMPETITION, (2) ELIMINATE UNNECESSARY RESTRICTIONS TO COMPETITION, (3) PROHIBIT ORGANIZATIONAL CONFLICT OF INTEREST, (4) PROVIDE FOR PUBLIC OPENNESS AND ACCESS TO THE PROCUREMENT PROCESS, (5) AND STOP LESS-THAN-ARMS LENGTH DEALING WITH CONTRACTORS WHO HAVE LONG, ONGOING AND CONTINUOUS RELATIONSHIPS WITH THE GOVERNMENT.

ANNUAL REPORT FROM OFPP OVERDUE

Q. THE LAST ANNUAL REPORT SUBMITTED TO CONGRESS BY OFPP COVERED YOUR OPERATIONS FROM JANUARY 1977 THROUGH SEPTEMBER 1978. HOW SOON MAY WE EXPECT A REPORT FROM YOU IN ORDER TO ASSESS THE PROGRESS MADE ON YOUR INITIATIVES AND WHETHER FUNDS HAVE BEEN PROPERLY EXPENDED IN MEETING CONGRESSIONAL OBJECTIVES?

A. I PLAN TO SUBMIT AN ANNUAL REPORT TO THE CONGRESS IN OCTOBER 1980 – A REPORT WHICH WILL COVER THE LAST TWO YEARS. BY WAITING UNTIL AUTUMN, I WILL HAVE HAD AN OPPORTUNITY TO THOROUGHLY FAMILIARIZE MYSELF WITH ALL OF THE ISSUES WITH WHICH OFPP HAS DEALT SINCE 1978 AND, AS A RESULT, BE IN A POSITION TO PROVIDE A MORE USEFUL, RESPONSIVE PRODUCT.

RECOMMENDATIONS OF THE COMMISSION ON GOVERNMENT PROCUREMENT

Q. OFPP HAS BEEN CRITICIZED FOR INSUFFICIENT PROGRESS IN COMPLETING ACTION ON THE 149 RECOMMENDATIONS OF THE COMMISSION ON GOVERNMENT PROCUREMENT. WHAT ASSURANCES CAN YOU GIVE THIS COMMITTEE THAT EMPHASIS WILL BE GIVEN TO ESTABLISH THE PRIORITY AND SCHEDULES FOR COMPLETING THE REMAINING RECOMMENDATIONS? WHAT IS YOUR PLAN FOR COMPLETING ACTIONS ON THE UNRESOLVED RECOMMENDATIONS?

A. MR. CHAIRMAN, MORE THAN 90 OF THE ORIGINAL 149 RECOMMENDATIONS REMAIN TO BE COMPLETED. WE ARE NOW REEASSESSING EACH OF THESE UNRESOLVED RECOMMENDATIONS. OUR PLAN IS TO ANALYZE AND RANK THE RECOMMENDATIONS, TO THE EXTENT FEASIBLE, ACCORDING TO THEIR IMPORTANCE AND ANTICIPATED COST-BENEFIT PAYOFFS. AFTER THE COMPLETION OF THIS INITIAL ANALYSIS, THE PRIORITY AND SCHEDULE FOR COMPLETION OF EACH RECOMMENDATION WILL BE DEVELOPED. WE INTEND TO SUBMIT A REPORT TO CONGRESS CONTAINING OUR PRIORITIES AND SCHEDULES FOR THE RECOMMENDATIONS IN OCTOBER. THIS REPORT WILL FULLY COMPLY WITH OUR LEGISLATIVE MANDATE (SECTION 8(a)(2) P.L.

96-83) FOR ADVISING CONGRESS ON THE RECOMMENDATIONS. OUR INTENTION IS TO COMPLETE THE RECOMMENDATIONS, AND I ASSURE YOU WE WILL DILIGENTLY PURSUE THAT OBJECTIVE.

AS YOU MIGHT ANTICIPATE, MR. CHAIRMAN, SOLUTIONS FOR MANY OF THE UNRESOLVED RECOMMENDATIONS WILL BE INCORPORATED IN THE UPS PROPOSAL; YET OTHERS WHICH REQUIRE LEGISLATIVE REMEDIES WILL BE INCLUDED IN THE UPS LEGISLATIVE RECOMMENDATIONS.

FEDERAL PROCUREMENT DATA SYSTEM

I WAS GLAD TO SEE THAT YOU HAVE IMPLEMENTED THE TRANSFER OF THE FEDERAL PROCUREMENT DATA SYSTEM FROM THE DEFENSE DEPARTMENT TO THE GENERAL SERVICES ADMINISTRATION.

Q. YOU SAID THAT YOU PLAN TO CONTINUE TO GIVE POLICY GUIDANCE TO THE SYSTEM. WHAT FORM WILL THIS GUIDANCE TAKE, AND WHAT ARE YOUR PLANS TO MAKE SURE THAT ALL EXECUTIVE AGENCIES PROVIDE ACCURATE INFORMATION TO THE SYSTEM IN A TIMELY MANNER?

A. I INTEND TO RELY ON OUR EXECUTIVE AGENT, GSA, AND THE COOPERATIVE WORKING RELATIONSHIP IT HAS WITH THE REPORTING AGENCIES TO ASSURE ACCURATE DATA SUBMISSIONS TO THE SYSTEM. I INTEND TO ASK GSA TO CHAIR THE FPDS POLICY ADVISORY BOARD AND TO OBTAIN THE ADVICE OF THE AGENCIES WHEN CONSIDERING CHANGES TO THE SYSTEM. IF THE BOARD RECOMMENDS ANY CHANGES, I PROPOSE THAT PRIOR NOTICE OF ANY SUCH CHANGES WILL BE SENT TO THE OFPP AS WELL AS TO THE GOVERNMENTAL AFFAIRS AND GOVERNMENT OPERATIONS COMMITTEES OF THE SENATE AND HOUSE, THIRTY DAYS BEFORE PROMULGATION. THIS WILL PROVIDE OPPORTUNITY FOR OFPP POLICY OVERSIGHT, AND AN APPEAL PERIOD BY THE AGENCIES TO OMB AND COMPLIANCE WITH THE REQUIREMENT IN P.L. 96-83 FOR A THIRTY DAY CONGRESSIONAL NOTICE. THE EXECUTIVE AGENT SHOULD CONTINUALLY ASSESS THE ACCURACY AND TIMELINESS OF AGENCY SUBMISSIONS. THE OFPP AND OMB STAND READY TO FULLY SUPPORT GSA REQUIREMENTS FOR TIMELY AND ACCURATE DATA FROM THE AGENCIES.

ACTIVITIES OF THE FEDERAL ACQUISITION INSTITUTE

Q. DESCRIBE THE ROLE YOU ENVISION FOR THE FEDERAL ACQUISITION INSTITUTE (FAI) IN PROCUREMENT RESEARCH, TRAINING, UPGRADING THE PROCUREMENT WORKFORCE, AND IN CONTRIBUTING TO THE EFFECTIVENESS OF THE UNIFORM PROCUREMENT SYSTEM (UPS).

A. I ENVISION THE FAI TAKING AN ACTIVE LEADERSHIP ROLE, PROVIDING GUIDANCE AND POSITIVE ASSISTANCE TO THE AGENCIES IN:

(1) DEVELOPING EFFECTIVE TRAINING AT ALL LEVELS TO INCREASE THE COMPETENCY AND PRODUCTIVITY OF THE WORKFORCE.

(2) DEVELOPING AND INTEGRATED GOVERNMENT-WIDE CAREER DEVELOPMENT AND MANAGEMENT SYSTEM.

(3) DEVELOPING THE FEDERAL PROCUREMENT RESEARCH PROGRAM TO IMPROVE THE STATE-OF-THE-ART OF PROCUREMENT, E.G. OFPP IS WORKING WITH OPM ON RECLASSIFICATION OF THE 1102 SERIES. THIS ACTIVITY IS TIED TO THE REDEFINITION AND RESTRUCTURING OF THE ROLE OF THE CONTRACTING OFFICER IN THE UPS. THESE EFFORTS WILL BE EXTENDED TO ENCOMPASS THE UPS STRUCTURE.

Q. DOES THE EARMARKING OF ONE-THIRD OF OFPP'S FUNDS FOR THE FAI LEAVE YOU WITH SUFFICIENT FLEXIBILITY TO ADVANCE THE OBJECTIVES SET FORTH IN THE LAW FOR YOUR OTHER INITIATIVES?

A. WHILE THE EARMARKING OF FUNDS NECESSARILY RESTRICTS FLEXIBILITY IN THEIR USE, I DO NOT BELIEVE THAT THE CURRENT ARRANGEMENT WILL RESTRICT THE PRIORITIES OF OFPP. BILL HUNTER, THE DIRECTOR OF FAI, AND I HAVE CAREFULLY REVIEWED THE FAI PRIORITIES FOR FY 1981 TO ASSURE THAT THEY COMPLEMENT OFPP'S INITIATIVES. WE HAVE REORDERED SOME PROJECTS -- SUCH AS THE IG TRAINING FOR FRAUD AND ABUSE AND TRAINING ON IMPLEMENTATION OF A-109 AND P.L. 95-507 - TO GIVE THEM HIGH PRIORITY. MOREOVER, FAI PERSONNEL WILL WORK CLOSELY WITH THE UPS TASK FORCES TO DEVELOP RELATED RECOMMENDATIONS ON PERSONNEL. THERE SHOULD BE SUFFICIENT FUNDS TO ADVANCE OFPP'S OBJECTIVES AND OTHER INITIATIVES.

I WISH TO POINT OUT THAT WHEN THE FAI BECOMES FULLY STAFFED, A SUBSTANTIAL AMOUNT OF THE BUDGET WILL ONLY SUPPORT THE SALARIES AND RELATED EXPENSES, LEAVING A SMALL AMOUNT FOR PROGRAM EXPENDITURES.

Q. WHO SHOULD HAVE LEAD RESPONSIBILITY FOR A-109 and A-76 IN SUCH ISSUES AS MAJOR SYSTEMS ACQUISITION (A-109), CONTRACTING OUT (A-76), AND THE USE OF CONSULTANTS SHOULD YOUR OFFICE TAKE THE LEAD OR DEFER TO OMB BUDGET ELEMENTS TO LEAD THE POLICY IMPLEMENTATION USING ITS BUDGET CLOUT, WITH OFPP FURNISHING PROCUREMENT EXPERTISE SUPPORT AS NECESSARY? PLEASE EXPLAIN.

A. IN THE FIRST PHASE, I BELIEVE WE MUST FOLLOW A TWO-PHASED APPROACH. OFPP MUST TAKE THE LEAD IN DEVELOPING EXECUTIVE BRANCH PROCUREMENT POLICIES AND THEN ENSURE AGENCY DIRECTIVES, REGULATIONS, AND PROCEDURES ARE ESTABLISHED TO IMPLEMENT THE POLICIES. UNTIL AGENCIES ESTABLISH THEIR OWN SYSTEM TO IMPLEMENT THE POLICY ON INDIVIDUAL PROGRAMS OR PROCUREMENTS, THE BUDGET CLOUT IS MOST DIFFICULT TO USE EFFECTIVELY. OFPP WILL CONTINUE

TO ASSIST THE AGENCIES IN POLICY IMPLEMENTATION. OMB BUDGET EXAMINERS MATERIALLY ASSIST IN EXPEDITING TIMELY RESPONSES FROM AGENCIES DURING THIS PHASE. IN THE SECOND PHASE, ONCE AN AGENCY HAS THEIR INTERNAL REGULATIONS AND PROCEDURES IN PLACE, THEN THE APPLICATION OF POLICIES SUCH AS A-109 TO INDIVIDUAL PROGRAMS CAN BE INSTITUTIONALIZED IN THE BUDGET REVIEW PROCESS. IN PRACTICE, OFPP HAS PREPARED THE QUESTIONS FOR BUDGET EXAMINERS TO ASK OF AGENCIES ON INDIVIDUAL PROGRAMS TO DETERMINE POLICY COMPLIANCE. OFPP THEN HAS REVIEWED THE ANSWERS AND, IN THE MAJORITY OF CASES, JOINED THE BUDGET EXAMINERS IN MEETINGS WITH THE AGENCIES.

OVERALL, WE HAVE FOUND THAT WE CANNOT DEVELOP AND PUBLISH POLICIES THEN TURN OUR BACKS. IF WE WANT POLICIES IMPLEMENTED, WE MUST MOTIVATE ALL THOSE INVOLVED IN THE IMPLEMENTATION AND WE MUST STAY INVOLVED.

Q. ARE THE CURRENT HIGH GRADE LEVELS NECESSARY TO CARRY OUT YOUR MISSION, OR DO YOU THINK OFPP COULD FUNCTION JUST AS EFFICIENTLY WITH A LOWER OVERALL GRADE STRUCTURE?

A. THE CURRENT GRADE LEVELS WHICH EXIST AT OFPP ARE THE MINIMUM GRADE LEVELS NECESSARY TO CARRY OUT ITS FUNCTIONS. TO EFFICIENTLY DEVELOP AND PROVIDE POLICY GUIDANCE TO EXECUTIVE AGENCIES REQUIRES THAT TALENT OF INDIVIDUALS WHO ARE EXPERTS IN THE DISCIPLINES RELATED TO THE PROCUREMENT, LEGISLATIVE, AND LEGAL PROCESS.

THESE INDIVIDUALS MUST HAVE STATURE AND BE RESPECTED FOR THEIR LEADERSHIP AND KNOWLEDGE BY THE EXECUTIVES WITHIN THE FEDERAL GOVERNMENT AND THE PRIVATE SECTOR WITH WHOM THEY DEAL ON A DAILY BASIS. ONLY THE MOST SENIOR PERSONNEL IN THE PROCUREMENT COMMUNITY HAVE THESE QUALIFICATIONS.

FURNITURE

Q. HOW MUCH IS INCLUDED IN THE 1981 BUDGET PROPOSAL FOR THE PURCHASE OF FURNITURE? HOW MUCH IS IN THE 1980 BUDGET?

A. NO FUNDS FOR FURNITURE ARE REFLECTED IN THE BUDGET PROPOSAL FOR FY 1981. NEITHER WERE ANY INCLUDED FOR FY 1980. WE ANTICIPATE MEETING OUR FURNITURE REQUIREMENTS FROM ANY OMB SURPLUS MATERIALS. THERE ARE SOME EQUIPMENT NEEDS WHICH WE FULFILL BY LEASE ARRANGEMENTS. THESE INCLUDE SEVEN TRENDATA WORD PROCESSING TERMINALS, THREE XEROX 850 WORD PROCESSORS, AND TWO XEROX COPIERS. THE WORD PROCESSING TERMINALS ARE USED FOR THE DEVELOPMENT OF THE UPS, INCLUDING THE FAR DRAFTS, REVISIONS, AND FINAL COPY FOR THE FEDERAL REGISTER. THE XEROX 850'S SERVE OTHER OFFICE NEEDS SUCH AS POLICY DRAFTS, TESTIMONY FOR VARIOUS CONGRESSIONAL COMMITTEES, AND CORRESPONDENCE.

CENTRAL COMPUTER SUPPORT

Q. HAS THE OFFICE OF ADMINISTRATION PROVIDED OFPP WITH ANY COMPUTER OR INFORMATION MANAGEMENT SERVICES OVER THE LAST YEAR? IF SO, WHAT SERVICES WERE PROVIDED? WHAT WERE THE CHARGES AND HOW WERE THEY FINANCED?

HAS THE OFFICE OF ADMINISTRATION (OA) TO YOUR KNOWLEDGE REQUESTED ANY FUNDS IN 1981 FOR THE SPECIFIC PURPOSE OF PROVIDING COMPUTER OR INFORMATION MANAGEMENT SERVICES TO THE OFFICE OF FEDERAL PROCUREMENT POLICY?

ARE THERE ANY FUNDS IN OFPP'S BUDGET THAT WILL BE USED TO PROCURE SUCH SERVICES FROM OA?

A. EXCEPT FOR USUAL PAYROLL AND ACCOUNTING SERVICES, WE HAVE NOT HAD TO RELY ON THE OFFICE OF ADMINISTRATION (OA) FOR COMPUTER OR INFORMATION MANAGEMENT SERVICES. FUNDS TO SUPPORT THE MINIMAL PAYROLL AND ACCOUNTING SERVICES FOR THE OFPP ARE INCLUDED IN OA'S BUDGET AND ARE THEREFORE NOT REFLECTED IN OUR BUDGET.

LOWER LAPSE RATE (+$70,000)

Q. WHAT FACTORS LEAD OFPP TO PREDICT IT WILL HAVE A LOWER LAPSE RATE?

A. WE ANTICIPATE WE WILL ENTER FY 1981 THIS OCTOBER, NEARER OUR FULL AUTHORIZED PERSONNEL STRENGTH. IN THE RECENT PAST, WE HAVE HAD A FREEZE ON NEW HIRING OR OTHER ADDITIONS TO THE STAFF PENDING SELECTION AND CONFIRMATION OF A NEW ADMINISTRATOR. FAI IN PARTICULAR HAS BEEN UNDER IT PERSONNEL CEILING THROUGH FY 1980. THIS FACT CONTRIBUTES GREATLY TO THE LAPSE RATE YOU CITE. THE CURRENT FREEZE ON PERSONNEL IS ANTICIPATED TO BE RELIEVED BY THE START OF FY 1981. IN THE MEANTIME, WE ARE PLANNING AND WILL BE GOING THROUGH THE SELECTION PROCESS TO BRING ADDITIONAL PERSONNEL ON BOARD, THUS, AFFECTING THE CURRENT LAPSE RATE.

Questions Submitted by Senator Bayh

FY 1981 BUDGET REQUEST FOR THE OFFICE OF FEDERAL PROCUREMENT POLICY

Q. RECENTLY, THERE WAS NOTED IN THE PRESS THAT INFLATION AND PRODUCTION PROBLEMS HAVE HIT U.S. TECHNOLOGY SO HARD THAT IN THE LAST TWO YEARS FEDERAL CONTRACTORS HAVE BEEN FORCED TO BUY MAJOR COMPONENTS FROM FOREIGN SUPPLIERS. CAN YOUR OFFICE GIVE THE SENATE SOME IDEA AS TO WHAT THE RESULT OF THIS WAS IN TERMS OF TAX DOLLARS GOING OVERSEAS IN THE PROCUREMENT PROCESS?

A. WE DO NOT HAVE ANY WAY OF ASSESSING THE ACCURACY OF THIS ALLEGATION. OUR FEDERAL PROCUREMENT DATA SYSTEM IS NOT YET REFINED ENOUGH TO PRODUCE DATA ON THE FOREIGN CONTENT OF GOODS PURCHASED BY THE GOVERNMENT. EVEN IF IT WERE, IT WOULD NOT BE ABLE TO IDENTIFY THE ADDED OUTFLOW RESULTING FROM ANY PARTICULAR SHORT-RUN SET OF CIRCUMSTANCES, SUCH AS PRODUCTION AND INFLATION PROBLEMS.

Q. TO WHAT EXTENT HAVE THE 6% AND 12% PRICE PREFERENCES UNDER THE BUY AMERICAN ACT RESULTED IN U.S. FIRMS GETTING GOVERNMENT CONTRACTS WHEN FOREIGN BIDS WERE CONSIDERED? IS THERE ANY WAY TO PROJECT THE IMPACT OF, SAY, A 25% PREFERENCE ON NON-DEFENSE ARTICLES?

A. WE DO NOT HAVE DATA AS TO THE NUMBER OF INSTANCES IN WHICH U.S. FIRMS WERE AWARDED GOVERNMENT CONTRACTS THAT THEY WOULD NOT HAVE RECEIVED WITHOUT THE APPLICATION OF THE 6% OR 12% PRICE DIFFERENTIALS. ANY PROJECTION OF THE IMPACT OF A 25% PREFERENCE WOULD BE PURELY SPECULATIVE. A STUDY BY THE GENERAL ACCOUNTING OFFICE IN 1976 INDICATED THAT LESS THAN 3% OF DIRECT FEDERAL PROCUREMENT IS EVEN SUBJECT TO FOREIGN COMPETITION.

Q. CAN YOU PROVIDE THE COMMITTEE WITH A SUMMARY OF THE IMPACT OF SECTION 401 OF THE HIGHWAY - MASS TRANSIT ACT APPROVED IN 1978 ON GOVERNMENT PROCUREMENT?

A. IT IS IMPORTANT TO MAINTAIN A CLEAR DISTINCTION BETWEEN PROCUREMENT CONTRACTS AND GRANTS AND COOPERATIVE AGREEMENTS BECAUSE OF THE FUNDAMENTALLY DIFFERENT PURPOSES FOR WHICH THESE DIFFERENT LEGAL INSTRUMENTS ARE AUTHORIZED. UNDER THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977 (P.L. 95-224), WHICH CODIFIED GENERAL GOVERNMENT POLICY AND PRACTICE, CLEAR GUIDELINES ARE PROVIDED FOR DETERMINING WHETHER AGENCIES SHOULD USE A CONTRACT OR GRANT IN SPECIFIC CASES, BASED ON THE PURPOSE OF THE TRANSACTION.

THE HIGHWAY MASS TRANSIT ACT OF 1978 IS CONCERNED ONLY WITH FEDERAL ASSISTANCE. PROCUREMENTS UNDER THESE GRANTS ARE SUBJECT TO SECTION 401 OF THE ACT. THE DEPARTMENT OF TRANSPORTATION (DOT) HAS ISSUED IMPLEMENTING REGULATORY COVERAGE FOR THE BUY AMERICAN PROVISIONS OF THE SECTION. IT CONTAINS A 10% PRICE PREFERENCE FOR DOMESTIC SOURCES, A 50% COMPONENT TEST FOR DOMESTIC VERSUS FOREIGN SOURCE, AND PROVISION FOR WAIVERS AS NECESSARY. THE ONLY WAIVER GRANTED SO FAR HAS BEEN WHEN NO DOMESTIC BIDDER WAS AVAILABLE. DOT ADVISES THAT, EVEN WITH THE 10% DIFFERENTIAL APPLIED ON RECENT RAIL CAR PROCUREMENTS FOR THE PHILADELPHIA AND D.C. SUBWAY SYSTEMS, FOR EXAMPLE, FOREIGN BIDDERS WERE THE LOWEST. HOWEVER, 51% OF THE MATERIALS THAT GO INTO THE CARS MUST COME FROM THIS COUNTRY AND THE FINAL ASSEMBLY MUST TAKE PLACE HERE.

Q. WHAT IS YOUR ESTIMATE ON THE AMOUNT OF FEDERAL DOLLARS EXPENDED DOMESTICALLY WHICH MIGHT OTHERWISE HAVE GONE OVERSEAS IN FEDERAL PROCUREMENT OF FOREIGN STEEL AND STEEL PRODUCTS?

A. I PRESUME THIS QUESTION RELATES TO SECTION 401 OF THE MASS TRANSIT ACT. WE DO NOT HAVE ANY DATA AS TO THE AMOUNTS SPENT DOMESTICALLY THAT WOULD OTHERWISE HAVE GONE OVERSEAS IN THE ABSENCE OF SUCH A PROVISION.

Question Submitted by Senator Schmitt

Q. HOW MUCH DO YOU HAVE IN THIS BUDGET REQUEST FOR EITHER RESEARCH CONTRACTS OR CONSULTANTS? WHAT DO YOU EXPECT TO GET FOR THESE EXPENDITURES?

A. THERE ARE NO SPECIFIC FUNDS ESTIMATED IN THE BUDGET FOR EITHER RESEARCH CONTRACTS OR CONSULTANTS. HOWEVER, BASED ON CURRENT EXPENDITURES IN THIS COST CATEGORY TO DATE, IT IS REASONABLE TO ANTICIPATE OUR EFFORT FOR THIS KIND OF ACTIVITY MIGHT AGGREGATE ABOUT $28,000. IT WOULD BE IN FURTHERANCE OF OUR MANDATE UNDER P.L. 96-83 TO CONDUCT A CERTAIN AMOUNT OF RESEARCH IN PROCUREMENT RELATED MATTERS TO ASSURE OPTIMUM EFFICIENCY.

Senator SCHMITT. Mr. Chairman, I have a few questions.

Since last year the Office has made some efforts, I think, in improving or suggesting ways to increase the number of contracts awarded to small businesses participating in the SBA 8(a) procurement. Is that correct?

Ms. WILLIAMS. That is correct.

Senator SCHMITT. Could you summarize generally for us, and maybe in more detail for the record, the status of the efforts to increase those contracts.

Ms. WILLIAMS. Senator, we have been working very closely with the Small Business Administration and with the Department of Commerce in the implementation of Public Law 95–507. As you are aware, that law established a statutory basis for small business and minority business subcontracting opportunities and requires that each Federal contract in excess of $500,000—$1 million in the case of construction—that subcontracting clauses be included and that specific percentages be established by the contractors for small business and minority business. We have worked with SBA in establishing goals on an agencywide basis. In several instances SBA and the agencies were not able to reach agreement, so it was necessary to invoke the arbitration procedures set out in 95–507 and set goals in such cases where goals were not able to be reached.

In addition, as part of the goal-setting process, SBA also established some informal goals with respect to the 8(a) projects as part of the overall effort for minority business, and these have been incorporated in the agency's goals. We are now working with SBA and MBDA at Commerce in supporting the agency's efforts to implement the goals specifically. We are working with them to help in identifying sources for matching up suppliers with requirements. OFPP has developed regulatory guidance with respect to the implementation of the subcontracting clauses, and we expect that those will be out by the end of next week. We will send them up to the Congress for the 30-day layover period, as required by the statute, with the view of having them firmly in place by the beginning of June.

Senator SCHMITT. Do they take into account—for example, New Mexico—that within a general area there are just insufficient numbers of small business contractors or minority business contractors in the specific field that a construction project or some other project might relate to? We have run into that problem in the recent past. Do your regulations take that into account by exception?

Ms. WILLIAMS. Senator Schmitt, we do not specifically take that into account in the regulations. What we have done in our discussions with the agencies and with SBA is to help them to identify, even in rural areas in the Southwest where the numbers of contractors might not be available in the immediate area, sources for various contracts, such as construction contracts, within a wider range and getting a range of support, particularly with primary contractors, to bring them on the job.

Senator SCHMITT. It sounds like the primary contractors are still going to have a problem.

Ms. WILLIAMS. What we are trying to do is help the prime contractor identify potential small and minority contractors beyond the immediate geographic area. In conversations with minority business and small business companies, they have indicated a willingness where they know there is an opportunity to work perhaps with several agencies who may have needs in a locale to bring the small business firms, the minority business firms, to that work opportunity.

Senator SCHMITT. Thank you, Mr. Chairman. We will have some more questions for the record.

Senator CHILES. Thank you.

We thank you very much for your appearance.

Ms. WILLIAMS. Thank you, Mr. Chairman.

COUNCIL ON WAGE AND PRICE STABILITY

STATEMENT OF ALFRED E. KAHN, CHAIRMAN, COUNCIL ON WAGE AND PRICE STABILITY

ACCOMPANIED BY R. ROBERT RUSSELL, DIRECTOR

BUDGET REQUEST

Senator CHILES. The committee will now receive testimony from the Council on Wage and Price Stability regarding the fiscal year 1981 budget request and fiscal year 1980 supplemental request.

As a result of budget cutting, most agencies' requests have decreased. However, the Council in 1981 is asking for a three-fold increase. That is an increase of 404 positions and $16,561,000 over the level approved to date. The amended request of the Council on Wage and Price Stability for the 1980 supplemental represents an increase of $4,270,000 and 250 positions over the previous request, for a total supplemental request of $5,250,000 and 254 positions. The amended request for 1981 is $16,561,000 and 404 positions more than currently available to the Council.

The proposal does substantially expand the programs of the Council on Wage and Price Stability announced last month as part of the President's anti-inflation program. We are pleased to have Alfred E. Kahn, the Chairman of the Council, and Mr. Robert Russell, the Director of the Council, with us today to discuss the testimony in support of these requests.

PREPARED STATEMENT

We will insert your full statement in the record, if you could give us the highlights.

[The statement follows:]

STATEMENT OF ALFRED E. KAHN

Mr. Chairman and members of the Committee, I am grateful for the opportunity to testify before you on the Council on Wage and Price Stability's FY 1981 appropriation request and to explain how it fits into the broader context of the President's strengthened anti-inflation program. With me is Bob Russell, the Director of the Council, who will help to answer any questions you have about this appropriation request and the Council's work.

It is no secret that our country is in an extraordinarily difficult economic situation. It is equally difficult to characterize that situation in a balanced fashion. Certainly the first point to make is that our per capita income, in real terms, was in 1979 at the highest point in our history; that it increased almost as rapidly in the 1970s as it had in the 1960s; and that we are, by any objective measure, extremely well off compared with all other countries in the world.

At the same time, it is also clear, we are facing in acute form the ugly phenomenon of aggravated inflation and threatening recession, and we are aware that they threaten to undermine our economic achievements of the last several years. The Consumer Price Index in the last twelve months has increased 14.7 percent. In the last few months, it has accelerated not just in the special problem areas of energy and home purchase but, increasingly, throughout the entire economy. The bond markets in recent weeks have virtually collapsed, and interest rates have soared to unprecedented levels.

Because of these troublesome developments, Administration officials--in full consultation with Members of Congress--conducted a thorough review of our economic policies. On March 14, the President announced a strenghtened anti-inflation policy. This has been so well publicized at this point that I will just briefly review the main components and then devote the rest of my testimony to the Council on Wage and Price Stability's role in the broader context of the President's program.

First, the President called for fiscal restraint and, specifically, pledged to balance the budget for Fiscal Year 1981 exclusively by a reduction in expenditures.

Second, there is more stringent restraint in monetary policy, specifically including selective credit controls for the first time.

Third, the President will institute a gasoline conservation fee.

Fourth, the President will continue his ongoing and intensive campaign to root out government regulations that protect people from the discipline of the competitive market, and that unreasonably inflate the costs of doing business. Our accomplishments in this area are, I believe, genuine and impressive: let me merely mention such examples as banking regulation reform, the deregulation of airlines, the liberalizations of trucking regulation already adopted by the ICC and the historic bill just passed by the Senate; the reduction and centralized control of paperwork requirements; Executive Order 12044, with its requirement that Executive Branch agencies adopt only regulations requiring the least costly means of compliance and its adoption of sunset requirements; and EPA's "bubble" policy. And permit me to remind you of the active role that the Council on Wage and Price Stability plays in this effort, with its 50 or so regulatory interventions each year.

Finally, we come to the voluntary wage and price standards, which are, of course, the responsibility of the Council on Wage and Price Stability. While they do not represent any kind of fundamental solution to the inflation problem, they will in the months immediately ahead be an extremely important part of the package -- one of the few parts that offer the prospect of restraining inflation while the more fundamental correctives are taking hold. It has often been observed, and with a great deal of truth, that wage and price standards, whether voluntary or mandatory, attack the symptom -- the fever -- rather than the disease. But in the kind of inflation from which we have been suffering in recent years, and that threatens us in the months ahead, the wage/price spiral is an important part and cause of the problem; and the self-justifying expectation that it will continue, and perhaps get worse, makes the disease progressively difficult to cure. To the extent, therefore, that the application and enforcement of pay and price standards lowers those expectations and exerts some restraining influence, however modestly, it does enhance the prospects of ultimate success.

I realize that it invites derision, when the Consumer Price Index has increased 14.7 percent over the last year, to assert that the pay and price standards have been remarkably effective, in the areas of the economy to which they apply; but that is a fact, and it must be stated. By the same token, it obviously must not be overstated.

The Council of Economic Advisors has estimated that had it not been for the standards, the rate of inflation last year would have been one to one and a half percentage points higher than it was. This estimate has been confirmed by Data Resources, Inc., and, in qualitative terms, by our own independent Price Advisory Committee, in a report it made to me recently.

As has frequently been observed, the sharp acceleration in the CPI, from 6.4 percent in 1977 and 7.6 percent in 1978 (as compared with the year immediately preceding) to 14.7 percent over the most recent 12-month period (March to March) was accounted for preponderantly by two of its components: energy and the cost of home purchase and ownership -- particularly mortgage interest costs. All other components of the CPI (besides energy and mortgage interest) went up during this most recent 12 months not by 14.7, but by 8.0 percent. The underlying rate of inflation --

the parts of the CPI to which, roughly, the price standards apply, and which omits the volatile areas of food and used car prices -- has increased 8.7 percent during those last 12 months.

The relative stability, until quite recently, in the underlying rate was, I believe, attributable in important measure to the standards. Despite the continuation of double-digit inflation throughout 1979, led by oil, beef and the cost of home purchase, increases in wages and private fringe benefits were no greater in that year than they had been in 1978. Cooperation of business with the price standard has been similarly satisfying. As a result, the underlying rate was remarkably stable during the year: 7.5 percent in the first three months of 1979, 7.4 in the next three, and 7.9 percent in the three months ending September of last year.

More recently, there has been a disturbing acceleration, however. The underlying rate averaged 8.6 percent in the last three months of 1979 -- a full percentage point above the first six months of that year; and it has been 12.7 percent during the first quarter of this year.
The behavior of the Producer Price Index for finished goods has been even more ominous. That index, excluding food and energy, averaged only slightly above an 8 percent annual rate in the period June through November of 1979. Then it soared to 11.3 percent in December, and 16.1 percent during the last three months.

What we seem to be witnessing in these last two or three months are the consequences first of sharply increased costs of purchased inputs -- largely of energy but also of other raw materials -- moving throughout the economy and showing up in finished product prices; second, of the very disturbing 2.0 percent decline in productivity between the fourth quarters of 1978 and 1979 -- so that even if wages went up no faster in the latter period than in the former, unit labor costs would have risen 2 percentage points more; and third, possibly, some price increases in anticipation of mandatory controls. And overall there is the constant and growing danger that continued double-digit inflation in the CPI will finally be reflected in an acceleration of wage increases -- which can only mean an acceleration of inflation.

Let me repeat, it is not my intention, in describing the successes of the pay and price standards for most of 1979, to exaggerate their importance. It would be equally accurate to characterize the record as our Price Advisory Committee did recently:

> "In large measure, although not totally, the price-restraint system floats on top a wave of inflation generated beyond its reach . . . .
>
> "The measured inflation rate within the purview of the program has run very materially below the inflation rate measured by the CPI. This fact, which receives very little public notice, is, in a sense, an indication of some success on the part of the program. But it also indicates the limitations of the program . . . .
>
> "Given the conditions under which it is operating, what is surprising is not the apparent failure of the system to stem the general tide of inflation, but rather the evidence of modest success."

In any event, the acceleration of the Consumer Price Index during the last year made it increasingly clear that we had to broaden and strengthen the cooperation we had already achieved, so as to keep the bulge of price increases in the essentially uncontrolled sectors of the economy from spilling over into the entire cost and price structure.

In order to secure that strengthened cooperation, late last year the President appointed a Tripartite Pay Advisory Committee, under the chairmanship of Professor John

Dunlop, with members from business, organized labor, and the general public. After lengthy consideration, that committee recommended that we adopt as our second year standard, not a single percentage, but a range of 7-1/2 to 9-1/2 percent, with the understanding that this would be expected to produce an average increase of 8-1/2 percent.

In the face of the more than 13 percent increase in the CPI, this recommendation reflected a highly commendable spirit of restraint and cooperation.

On March 14, after rather lengthy discussions to clarify -- and in one respect to amend -- the recommended new standard, I accepted it on behalf of the Administration. I emphasized, however, that we could not hope to achieve the anticipated 8-1/2 percent average if individual businesses and unions were to feel free simply to declare themselves deserving of above-average treatment without good reason; and I therefore formally asked all businesses that have 1,000 or more employees and that settle upon pay increases above the 8-1/2 percent range to report that fact promptly to the Council, along with the underlying statistical information.

I should point out that, with reluctance, the Administration also accepted the recommendation of the Pay Advisory Committee that cost-of-living adjustment (COLA) clauses in multi-year contracts be evaluated on the assumption that the average increase in the CPI over the life of the contract would be 7-1/2 percent per year. This unrealistically low estimate means that union workers enjoying the protection of COLA clauses can, within the standard, probably end up receiving annual wage increases markedly in excess even of the 9-1/2 percent upper limit. And this is likely, therefore, to aggravate the inequity produced during the first program year by the 6 percent evaluation of COLA clauses -- a reasonable estimate when it was first made, but one that obviously proved unrealistically low -- between the achieved wage increases of workers enjoying the protection of such clauses, on the one side, and the great majority of workers, unionized and nonunionized alike, who do not have such protection, on the other.

All I can say, in justification, is that the COLA evaluation was a part of the bargain, hammered out in intense discussions among the various members of the pay committee; and that in our collective judgment the bargain was still a good one, which promises genuine restraint in the face of a painfully higher rate of increase in the CPI.

On the price side, the Council promulgated its second year standards last November. In recognition of the fact that the second-year pay standard would almost certainly turn out to be higher than the first year's, the basic price deceleration standard was liberalized; we are expecting companies subject to it to hold their price increases over the first two program years -- that is, from October 1, 1978 to October 1, 1980 -- to the level of the two-year 1976-77 base period. On the other hand, we tightened up the profit margin exception, to which firms with uncontrollably increasing costs are permitted to move, by curtailing their opportunity to increase their profit margins to the ceiling levels of the best two out of three years in the 1975-77 period. Dr. Russell will, of course, be glad to explain these changes in detail.

Last week, our Price Advisory Committee recommended a slight further liberalization of our basic price standard, in recognition of the fact, among others, that we have now accepted a 7½ to 9½ percent pay standard. We are giving their recommendations careful and prompt consideration; I would be glad to set forth the pros and cons of making such a change, if you would like to pursue the matter.

The recent acceleration of price increases generally, and the possibility that some of them are anticipatory, have made it clear that we must do what we can to improve the effectiveness of the price standard. Bolstered by a similar recommendation by our Price Advisory Committee, the President has approved our asking Congress for the resources needed to step up the breadth and intensity of our monitoring effort. Specifically, we will be presenting to you today our request for authority to expand by several hundred our pay and price monitoring staff, which now measures approximately 100.

We plan to use these additional people mainly, first, to enable us to do a much more thorough review of the statistical reports that we now receive routinely from all businesses with annual sales of $250,000,000 or more; second, to look in individual cases at the backup financial records of the companies; third, to lower the reporting threshold to $100,000,000 of annual sales, thereby increasing our automatic coverage from about 1200 to about 2500 companies; fourth, to speed up our handling of requests for exceptions and of decisions on noncompliance; fifth, to look in a more systematic and coordinated fashion at individual industries that seem to be experiencing unusual price increases, and to work more closely with them in eliciting restraint; and, sixth, on a selective basis and where it appears it would be helpful, to ask for prenotification of price increases and information on how planned increases would comport with the standards.

Our tentative plans call for expanding the present 89-person Price Monitoring staff to 436 employees. We will add 210 persons in FY 1980 and 137 persons in FY 1981. These people will work either in the newly-expanded price monitoring division or the exceptions division, or in the prenotification or field investigation and audit program. The total includes senior managers, division supervisors, analysts, accountants, research assistants, clerks, and secretaries.

Our Office of Policy, Planning &Evaluation will expand from its present size of 13 to 18 in FY 1980 and 20 in FY 1981. This office provides analytical support for all phases of the Council's activities, and we anticipate that the expanded and intensified monitoring system will increase substantially the staff's workload. The Office of Planning, Policy & Evaluation is divided into an Economic Support Group, which provides industry analysis and targeting information on specific industries with special monitoring needs, and a Computer Support Group.

Our General Counsel's staff will be increased from its present size of 17 to a total of 50; we will increase the staff to 44 in FY 1980 and 50 in FY 1981. This increase includes senior and junior attorneys, paralegals, and secretaries. It is necessary in order to provide legal support for the expanded price monitoring efforts. Because of the lowered threshold for reporting -- from $250 million to $100 million -- we anticipate a great increase in the number of company reports and, of course, in exception, noncompliance, and reconsideration cases.

The 31-person Office of Pay Monitoring administers the voluntary pay standard and monitors wage increases in the economy as a whole. We will have an increased number of filings because companies who settle pay increases above 8.5 percent are required to file notices to this effect. We expect this intensified monitoring will require a total of three new employees for FY 1980 and FY 1981.

Finally, as the program offices increase in size, the various administrative and support functions in the Council will increase by five in FY 1980 and another five in FY 1981. The additional positions will go to my office, the Director's office, the Office of Administration and Management, and to our Public Affairs office.

In sum, for FY 1980 we are asking for a total staff of

487 for the Council, which is 250 more than our earlier FY 1980 request. In FY 1981, we plan to expand the staff by another 150 people, bringing the final total to 637 persons.

I emphasize that this request for a staff increase does not approach the 4,000 to 5,000 person staff that was required to monitor the mandatory controls under President Nixon, let alone the 65,000 or so employed during the Korean war. But in the critical months ahead, while we are waiting for intensified budgetary restraint, tighter controls on credit, the national energy effort, regulatory reform, and our hoped-for longer-term attack on the productivity problem to take effect, it seems to us essential to redouble our surveillance of prices particularly, in order to assure to the fullest extent possible compliance with the voluntary standards, and by so doing assure workers that the restraint they have displayed or been forced to accept will be matched on the price side. And we will continue aggressively to identify publicly companies that fail or refuse to comply.

As our Price Advisory Committee concluded,

> "the present wage-price system. . . cannot work unless it is a component of a general anti-inflation posture for government and the economy as a whole . . . . The wage-price system, strengthened to achieve a much higher demonstrable level of compliance, can serve as an important component of such a plan."

We do sincerely hope that your committee will support such an expansion of our capability. We believe these funds are essential to our task and we look forward to your continued cooperation and understanding in enabling us to meet our responsibilities.

Thank you.

Proposed Appropriations

	FY 1980	FY 1981
Revised Estimates	$13,743	$25,044
Pending Requests	9,473	9,770
Proposed Requests	4,270	15,274

GROWTH OF INFLATION

Mr. KAHN. I will, Mr. Chairman. Thank you for giving us this chance.

In my prepared testimony I have tried first to summarize the extraordinarily difficult situation which our economy finds itself in. I begin quite properly by pointing out our per capita income in this country was in 1979 the highest point in our history. I think that is important to keep in mind. It increased almost as rapidly in the seventies as in the sixties.

Of course, we then have to recognize we are now facing in acute form the ugly phenomenon of inflation and threatening recession, and I summarize the evidence which is now distressingly familiar, in particular the acceleration of the Consumer Price Indices—and even more particularly the fact that although most acceleration is directly the result of energy prices and home purchase costs, there is disturbing evidence that the residual is now also increasing. It is running at something like a 12-percent level, compared to 8.5 in the latter part of 1979.

ANTI-INFLATION PROGRAM

I then describe the main components of the President's accentuated program. I linger on in my testimony about the regulatory reform plight and try to outline some of our genuine accomplishments, because I want to remind you that the Council on Wage and Price Stability plays an important role in that effort with its 50 or so regulatory interventions each year.

But, of course, the expansion we are requesting is to administer the voluntary wage and price standards, and I would like to say a few words about that.

We recognize that the wage and price standards do not represent any kind of fundamental solution to the problem of inflation, but we do feel strongly they will in the months immediately ahead be an extremely important part of the President's package—one of the few parts that offers some prospect of restraining inflation while the changes in fiscal, monetary, and energy policy take hold.

I realize it invites derision, when the consumer price index has increased 14.7 percent over the last year, to assert that pay and price standards have been remarkably effective. But it is a fact, and it must be stated, that they have been remarkably effective in the areas of the economy to which they apply.

The Council of Economic Advisers has estimated that had it not been for the standards, the rate of inflation last year would have been 1 to 1½ percentage points higher than it was. This estimate has been confirmed by Data Resources, Inc.

And if I may pause just for a moment, if indeed the pay standards account for as much as, let's be modest and say a 1-percent deceleration in inflation, in a $2.5 trillion economy that is $25 billion of lesser increases in prices, which is 1,000 times the total appropriation we are asking for next year.

I point out the reasons why we contend that the standards have had an effect, the remarkable stability during most of last year in the underlying rate of inflation—that is, exogenous shocks from energy and high interest rates, especially in home purchases—and the fact that wage increases in 1979 were actually slightly less than they had been in 1978, despite the fact the CPI was going up much higher. Then, of course, we have to recognize we have been witnessing a very serious acceleration in the last 3 or 4 months, and these seem to be consequences largely in the underlying rate of the flow through of sharply increased prices of energy which are beginning to show up in the cost of transportation, synthetics, fertilizer, and the like, as well as metal products; second, the consequence of the very disturbing 2-percent decline in productivity between the fourth quarters of 1978 and 1979, which, of course, increases unit prices temporarily; and third, possibily some anticipatory price increases, in anticipation of mandatory controls. Then, of course, there is a constant danger we will get a spillover of the high double-digit rates of increase in the CPI, which only means worse inflation.

It is in these circumstances that the pay and price standards are important. It explains why at a time when all of us have been participating in a very painful budget cutting exercise that nevertheless we urge on you, the funds to do everything we can in the months ahead to improve the visibility of the price and pay standards, their pervasiveness and their credibility.

INCREASED CWPS FUNDING

Let me then explain why in these circumstances the President approved our asking Congress for the additional funds to permit us to expand our staff by several hundred.

On page 11 of my testimony I outline the main way we plan to use the additional people.

First, to enable us to do a more thorough review of the statistical reports we receive routinely from all companies with sales of $250 million or more.

Second, to look in individual cases at the back-up financial records. At present we have no capability to do that. We simply accept the figure companies give us.

Third, to lower the reporting threshold from companies with $250 million to $100 million of annual sales, which increases automatic coverage from 1,200 to 2,500 companies.

Fourth, to speed up our handling of requests that we are going to get for exceptions and decisions on noncompliance.

Fifth, and this is very important—to look in a more systematic way at individual industries that seem to be having unusual price increases and work more closely with them in eliciting restraints. We have had meetings with the health care industry, industrial chemicals, and tomorrow with metals and metal products industries.

And sixth, on a selective basis and only where it appears to be helpful, to ask for prenotification of price increases and information on how those would comport with the standards.

In the remaining pages of my testimony, I describe how we would plan to allocate those additional positions.

In sum, in fiscal year 1980 we are asking for a total staff of 487 as compared with the present 237. In fiscal 1981, we are asking for a total staff of 637.

I would like to emphasize that increase does not approach the 4,000 to 5,000 such as were required to monitor the mandatory controls under President Nixon, let alone the 65,000 provided during the Korean War. But in the critical months ahead, while we are waiting for budgetary restraints, tighter controls on credit, the national energy effort, regulatory reform, and our attempts to attack the productivity problem to take effect, it seems to us essential to redouble our surveillance of prices in order to assure maximum possible compliance with the standards.

We hope your committee will understand the unusual nature of this request to expand where everywhere else the administration is asking to contract. We believe these funds are essential. We look forward to your cooperation in helping us meet our responsibility.

Thank you.

WAGE AND PRICE CONTROLS

Senator CHILES. There have been some that have said the reason for the need for these increases is to get the vanguard on board so when you go for mandatory wage and price controls you will be ready.

Mr. KAHN. That is absolutely the opposite of our intention, and when I say ours, it is equally the opposite of the President's. We are doing our level best to make the voluntary standards work. We are opposed to mandatory controls. But we think that does give us a responsibility to make the present standards visible. With 100 people in price monitoring to cover the overwhelming mass of companies in the country, we are not very visible or credible. We think with an expansion of the total staff we can make the voluntary controls have a palpable effect. It isn't going to solve inflation, but in this way we cut off anticipatory price increases.

SANCTIONS

Senator CHILES. We know the President doesn't have powers to impose mandatory wages and prices. What additional powers does he have in the way of sanctions, if any? You speak of prenotification. What kind of powers in regard to rollback, other sanctions, are there that the President has if he wishes to use them?

Mr. KAHN. By far our most powerful sanction is the weight of public opinion. I just don't have the slightest doubt, for example, that our optimistic expectation that we will work out a returning to compliance and corrective actions by the companies we are negotiating with now are above all else influenced by their fear of adverse public opinion.

Second, of course, the Supreme Court has sustained our authority in the last analysis to use the contract sanction. With that sanction there is a possibility we have achieved in at least a score, maybe two score, of companies coming into compliance without our having to find them out of compliance.

We are prepared to look at other discretionary Government programs. I am not really in a position to spell them out. But there are other programs that are comparable that we are very reluctant to use but are prepared to use if it is absolutely necessary.

Senator CHILES. Give me some examples.

Mr. KAHN. I can't give you a precise example. We have made informal inquiries. There are discretionary grants, and in cases in which our lawyers feel that the purposes of the grants program are sufficiently similar to the purpose of contracting—that is, where economic buying ties them sufficiently closely to the standards—they feel that there are some that we can give or deny. But I am not in a position to say. I would be happy, if our lawyers approve, to give you some sort of statement of our tentative legal analyses of these in writing if you would like.

UNDERLYING INFLATION RATE

Senator CHILES. We would like that.

[The following letter was provided as a response to the chairman's request:]

MAY 23, 1980.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHILES: Let me open by thanking you for your support for our appropriations requests. As I know you are fully aware, it is urgently important, in the months immediately ahead, that we make the fullest possible use of the voluntary wage and price standards to get the maximum anti-inflationary effect out of the recession into which we seem to be moving.

When I appeared on April 23 before your appropriations subcommittee, you asked for some examples of programs where the Government could withhold benefits as a sanction against noncompliers with the standards. Having promised to reply later, I am deeply sorry that it has taken us so long to do so.

As I said to you then, our most powerful sanction is the weight of public opinion. Our authority to use the contract sanction has, however, also been helpful, particularly in persuading companies that would otherwise be out of compliance to take corrective action.

When the President announced the program in October 1978 he said he would use all the means at his disposal, including withdrawal of economic privileges conferred by the Government. He was referring in part to the discretion inherent in certain Federal programs and available under various statutes. The President was not specific, and neither can I be, because determining what kinds of action are available, and the suitability of taking one or another of them can be done only on a case-by-case basis, depending on the particular circumstances of each case.

In each instance of noncompliance, therefore, we review the situation to see if we have any means available to help us impress upon the company the importance of coming into line. Our objective is, above all else, to achieve compliance, rather than to penalize noncooperators. In view of the increasing number of corrosive actions we're getting, we obviously are having some success, and if this continues to be the case, there should be no need for us to marshall other forces. We have never developed a comprehensive list of all the inducements and tools of persuasion legitimately available to us, and frankly, we hope it will continue to be unnecessary.

I am sensitive to the possibility that you will regard this response as insufficiently responsive or it was insufficiently prompt. I would be happy to discuss it with you at greater length, if you feel that would be helpful. I do genuinely want to be helpful to you.

Sincerely,

Alfred E. Kahn,
Advisor to the President on Inflation.

You mentioned what you felt were some of the successes of the Council last year. You also mentioned, of course, that the underlying rate of inflation stayed very constant. Every indication we have this year is that that is completely out of bounds. It is the underlying rate of inflation we are worried about. From what I see in the writeups about yesterday's report in this morning's news, it looks like again it is the underlying rate that is causing the most damage. Energy itself is moderating some.

Mr. Kahn. Well, it is true that energy has moderated. Its increase last month I think was on the order of 3.5 percent, an annual rate of only 43 percent last month as compared with 82 the preceding month. Five-sixths of this acceleration is energy and mortgage interest rates.

Mr. Russell. And the overall rate, Mr. Chairman, is still far above the underlying rate. So it is still the case that most of the inflation problem we have is in those problem sectors of mortgage interest rates and energy.

Senator Chiles. We have been figuring a lot of our budget figures on the basis that there would be a pretty good breakoff in the CPI and therefore a reduction in the interest rates, and that breakoff has got to come pretty quick or we better refigure everything. And looking again at these increases of where we are now for March makes me wonder whether we are going to get any kind of breakoff. Why are the mortgage rates up this high when we hear construction has stopped?

MORTGAGE INTEREST RATES

Mr. Kahn. There is a 2- or 3-month lag between a decline in posted mortgage rates and long-term interest rates. We have had a decline in terms of long-term interest rates in the last 2 months, which is evidence that the President's additional restraints are beginning to take place. But there is a 2- to 3-month lag between those changes and entry of those changes in the Consumer Price Index. So if the present recovery of the bond market and decline in long-term interest rates is sustained even at its present level, even if we don't get further improvement, it will be at least another 2 months before we see it in the Consumer Price Index. But when we see it, we will see a drastic change because of that distortion in the CPI. All you have to have is a stabilization of mortgage interest rates, which we see every reason to expect about 2 months down the line. That alone will take something like four points off the CPI. In addition, we believe it is a reasonable prospect that the prices of energy will begin to stabilize but for the gasoline conservation fee, which should hit the Consumer Price Index in May, and that that, too, will knock something like three or four points off the CPI. So it is a reasonable prognosis that by summer the rate of the CPI, which has averaged 18.1 percent in the last 3 months, should be down to around 10 percent.

That is a rough estimate. Of course, anything could happen. If Iran suddenly goes out, if you get a new panic, all bets are off. But I think as a most probable estimate that at that time what we will be confronting is this underlying rate. I don't mean to deny that has slipped up. It was running perhaps 7.5 or 8 percent. It now will be 10.5 percent. At that time we have to start addressing ourselves to the long-run, downward grind. That is the level influenced by productivity, by wage settlements.

Senator CHILES. That is where there is going to be tremendous pressure on wage settlements. We see indications that farm prices will be up by the end of the year, going the other way, where they have been kind of settled. So it looks like there are many, many problems there.

GOVERNMENT ACTIONS

Senator SCHMITT. Mr. Chairman, if you would yield for a moment.

Mr. Kahn, I don't fully agree with the analysis that puts all the blame on the interest rates and all the blame on energy costs, as you probably are aware. The underlying rate, however you calculate it, is still very high and even the question of energy costs and interest rates relate to fiscal policy and to other policies of the Government. Has your office tried to estimate the actual impact of the budget deficits over the last 3½ years on interest rates?

Mr. KAHN. No, my office has not. I am not sure whether the Council of Economic Advisers has.

Senator SCHMITT. What about the withdrawal of Federal lands extensively for domestic oil and gas production?

Mr. KAHN. Again, we have not made an explicit estimate. I do call to your attention that we at the Council, and other organizations, like the Council of Economic Advisers and the regulatory analysis review group, have been working on all these regulatory activities and have played a role, for example, in the determination of how much land should be set aside and the tens of millions of acres that are removed from the uncertainty list. But I don't have a specific answer to your question.

May I say I agree with you we should not pretend that all of our inflation is the consequence of these two external factors. Interest rates are certainly themselves a reflection of all sorts of things in our economy, and of course the President has made the pledge——

Senator SCHMITT. But there has been a tendency—and this was evidenced by Secretary Miller before this committee a few days ago—a tendency to try to blame external factors for the inflation rate we are seeing today. I don't think that that is intellectually honest. We had control of our destiny, and we allowed it to slip away, and a great deal of that has been in the last few years. Something close to $175 billion is the total Federal deficit that the Federal Government has borrowed from the money market, which up until the recent tight money policy was financed in the ultimate by increases in the money supply. Now with the tight money the interest rates clearly have been forced up. You do, however, think they are going to come down under a continuation of present policy?

BUDGET POLICY

Mr. KAHN. We are dealing with a new phenomenon, a new situation in our economy in terms of our susceptibility to inflation, in terms of the forcefulness of that thrust to a renewal of inflation if we let down our guard. The President's budgetary efforts did not occur merely this year. I submit that the real growth of nondefense Federal spending in the last 4 years has been something like one-fifth of the rate of increase through all the sixties and seventies, until 1977. So the President has been practicing more fiscal restraint than he has been getting credit for. Clearly, the intention is to diminish inflation.

On the other hand, you can't simply attribute inflation to an unbalanced budget. The deficits in Germany and Japan are many times ours.

Senator SCHMITT. No, but their savings rate is far higher than ours. In Japan they have a savings rate over 30 percent. That makes a lot of difference when you start to look around as to how to finance the Federal deficit.

ENERGY PRICES

Mr. KAHN. Precisely. It is a fact we have an expansion of debt in this economy of $400 billion last year, of which the Federal debt was a small fraction. You are right. We should not simply say it is all energy. On the other side, I don't think we can deny the 230-percent increase in OPEC prices and the consequences of deregulation domestically, which I think was necessary. It ought to be possible for honest people to recognize that energy has been very powerfully influential in the upthrust, but we also have a basic problem.

Senator SCHMITT. I don't deny it. But don't say we had no control and we don't have any control in the future. I think that is not the debate for this place. Nevertheless I hope we can strive to be intellectually honest so we can understand the underlying problem and how to solve it.

Mr. KAHN. I couldn't quarrel with that.

Senator SCHMITT. Thank you.

ZERO INFLATION IMPACT

Senator CHILES. Thank you.

As you know, Mr. Kahn, from our leadership meetings one of our greatest concerns is that our anti-inflation efforts have some credibility. Every time I talk to a businessman about inflation, they talk about regulations more than they do about balancing the budget. I have offered an amendment to the budget resolution calling for zero inflation impact policy so we can say the overall direction is going to be one of at least holding regulations where they are, if not trying to reduce them. That policy would say any time you are about to issue a regulation with a measurable cost to the economy, you should have to offset it by changing some existing regulation to save the same amount. The cost savings would not necessarily have to be in the same agency or activity for the new regulation.

Given the current rate of inflation and given the fact we are really seeking confidence here, don't you think that the zero inflation impact would be an appropriate economic policy for the 1980–81 timeframe?

Mr. KAHN. I would be reluctant, Senator, to give you any kind of formal endorsement of that particular proposal. While I have no doubt whatever that restraint on the regulations side and deregulation where it will work—and I am happy to be before two Senators who have been active in support of deregulation of trucking, for example—while making sure that our regulations are cost effective, making sure we try to take into account the respective cost and benefit—and I think our record on that is extraordinarily good in this administration, I am really proud of it—at the same time what do you do if you discover that there are an awful lot of carcinogens which have not been recognized which are killing a lot of people? I would find it difficult to say, well, I am not going to put in any kind of regulation even where the relationship of costs to benefits is clear and beneficial unless I can find other places to take them out. I am inclined to reject a rigid control of Federal expenses measured to an amount of the GNP. But that is not a final judgment.

Senator CHILES. We were talking with OMB and they tell us they made a 15-percent reduction in paperwork, that is, the administration has, and they are taking great credit for it. And Senator Schmitt and I myself every time we go home we can never find anybody who thinks there has been a reduction in paperwork. Exactly the same thing happens in regulations. You go and ask any businessman has he ever seen or has there been any reduction in regulations, and he will tell you there hasn't. As you know, because you say it so well, what we are combatting here as much as anything else is the anticipation that inflation is going to be worse next year than it is now and it becomes a self-fulfilling prophecy. I would say if those carcinogens are out there and we want to do something about it, we ought to look at some of our existing regulations. We should determine where the areas are that we have regulations that have been on the books a long time that are not doing anything, and we should make decisions to reduce or eliminate those regulations. We say we are going to reduce regulations, and we have done so in the trucking industry. How much is that going to save us? That goes on our credit side. You can use that against a new regulation you would like to have. Unless you put some signals like this out, where in effect you put an absolute restraint on yourself, you are never going to make the business community believe that you are doing any good. Right now there is nothing on the part of the Council—and we haven't been able to get anything binding in the statutes that makes us go back and look at past regulation. We are talking about all this we are going to do in regard to new regulations, but what about all those past regulations that are sitting there. This is something that will put the gun to your head and make us look at past regulations.

Senator SCHMITT. If the chairman would yield. I don't think the White House has been very enthusiastic about any measure that would provide congressional option of reviewing past regulations and forcing a repromulgation of those regulations. That has been proposed as part of the legislative veto efforts. But we have not had support from the White House for any of these efforts.

LEGISLATIVE VETO

Mr. KAHN. The issues raised by the legislative veto are much more complicated than that. I tell you I would be willing to make you a bet if we had a legislative veto of regulations, we might end up with more regulations.

Senator SCHMITT. I take that bet, because you are going to have one on the FTC if you are going to have an FTC.

Mr. KAHN. There is a perfect example. If people believe that removing the necessity for the funeral industry's publishing prices so people——

Senator SCHMITT. I am not arguing that point. I didn't fight for those restrictions. You know that. All I fought for and all I think the Congress is generally fighting for is a chance to review the regulations before they become law. That is a legitimate constitutional duty.

Mr. KAHN. I am not a lawyer. I am not going to argue that. When you talk about giving numbers, we have deregulated the airlines. Congress proceeded to banking reform. We are pressing for deregulation, and I hope the Congress will be cooperative, on communications, the railroads, the Regulatory Reform Act, which we are pressing. Executive Order 12044 is a very important step in that direction of introducing rationality. We have sunshine principles, which we hope you will endorse. Those are terribly important ways of accomplishing what you are talking about. I am not quarreling at all. Indeed, I am proud of what we have done in the past 2 or 3 years. I think what we have done is revolutionary compared to what has been accomplished in the last 20 or 30 years. I can't say you are right or wrong that giving a signal, putting something out that is economically irrational, such as 20 percent of the GNP on Federal spending, or zero net increase in regulation, it may be by the pressures it creates and message it gives, maybe you could argue that is still desirable. I am not giving an opinion on that. I am not at all ashamed of our record on regulatory reform.

Senator SCHMITT. You brought up the factor of lives being lost to carcinogens. The principal carcinogen is tobacco. That is one that you can prove that lives are being lost, but we are not going to do anything about tobacco, the administration isn't, other than jawboning, and the Congress isn't either. When you come to the others, you are stuck with the Delaney clause, which gives absolutely no discretion. It is not a question of whether people are being killed, but mice. We have just come across one where the experiment was done in 1964 and FDA discovered it and all of a sudden the beef industry is being hit by experiments conducted in 1964 which have not been verified, have not been reviewed by the scientific community as to whether they were valid experiments or whether the levels involved have any bearing on human physiology. So we have to get some rationality in these regulations, whether you are talking about carcinogens or anything else. Let's start using common sense.

REGULATORY REFORM

Mr. KAHN. I couldn't agree with you more. There is a difference in the tobacco case because that is essentially voluntary. That is not the same as working in a place in which you are exposed to carcinogens over which you have no control, or exposed to them in the products you consume. I know in the Delaney clause we are very much concerned on the question of nitrites and nitrosamines. I frankly don't know where that stands, because it has not come to my attention. In fact, you are faced with a choice between something that might be a mild carcinogen or a real threat of botulism.

Senator SCHMITT. But there is no option. We talk about building some discretion into an overly restrictive law.

Mr. KAHN. I agree, but that is statutory. I agree the blame has to be spread.

Senator SCHMITT. We end up finding people opposing any relaxation of that so there can be discretion.

Mr. KAHN. I agree with the principle there has been discretion. I am not in a position to tell you where that stands today. I would be glad to report on that if you like.

Senator SCHMITT. Thank you.

Senator CHILES. When we look at what we are trying to do in the budget process, of course, we are trying to find a way to put some restraint so we come up with an overall number. The President has his number. The Congress gets their number. They say that is going to be the number. We are not doing that at all. Can't we do that for the regulatory process? If zero is the wrong number, what is the right number? But shouldn't there be a number? Because the way it is, the sky is the limit; there is no downward pressure.

REGULATORY BUDGET

Mr. KAHN. Senator, the notion of having a regulatory budget, which is precisely the analogy you use, is a very attractive one, and I know there are people in the Government and outside the Government who are trying to see how such a budget might be developed. I would be glad to look into those and see if we may be able to cooperate, whether that might be feasible. Because I certainly agree with you the necessity of economics cannot be escaped whether imposed by regulation or not.

Senator CHILES. I think we are going to have to do something about it. I was surprised to find CWPS does not regularly monitor the inflation effects of new legislation before enacted. It seems if you wait to review regulations after a law is passed, your ability to find the most cost effective method is often limited by the law. I would think you need to get a preventative approach, in a way, to advise the President of the economic impact of bills coming out of the committee. In fact, I think it would be a good idea if you designated a member of this new staff to focus on the economic impact of legislation reported by committees. They could draw on the expertise of our current device, and pass your comment on to the OMB legislative review division which prepares the administration's position on pending legislation. In fact, I think information like that would be very helpful to budget-minded Members of Congress and to others, pointing out adverse effects of legislation, because many times you could do something in a different way recognizing that.

REGULATORY ANALYSIS BY CWPS

You know we have a Senate rule which requires our committees to consider and report on regulatory paperwork impacts when reporting a bill out of the committee. One of the problems we have had is a lack of expertise at our committee and in the Congressional Budget Office to develop a regulatory analysis. It seems that your Council is the one place, with a staff that specializes in this type of analysis, where there could be some kind of a cooperative effort between the CBO and your Council in helping us with that paperwork analysis that we are required to put on every piece of legislation, and you report on what you feel are inflationary impacts on legislation.

Mr. KAHN. I find that immensely attractive. I feel if we had the staff capability we could. I can't speak officially for the administration. It seems to me that under Executive Order 12044 the regulatory calendar requires every agency proposing a regulation to develop such an economic impact study, and they have been getting better and better, and we use them in analyzing the regulations and subjecting them for review.

Senator CHILES. I listen to your needs you expect to put these 400 some people into, and I can't think of any better needs they could be addressing than helping monitor some of this legislation.

Mr. KAHN. I think that would be a good idea.

CWPS STAFF DISTRIBUTION

Senator SCHMITT. Mr. Chairman, I see by the direction of new staff positions that most of them would go into price monitoring, only three into pay monitoring, and with the General Counsel getting the other major increase. Do you think they could be, if approved, redistributed? I am not sure I like that price versus pay balance. It seems to me the equation is unbalanced.

Mr. KAHN. It is not really invidious, Senator, even though it appears so superficially. We are monitoring literally millions of prices. We find just processing the regular forms that we receive from the very largest corporations very small in relationship to all the businesses in the economy. It is a huge job.

In the case of pay, we find our staff is able to keep up. We are able to look only at the larger segments. The companies themselves can very largely do the compliance. We also have a Pay Advisory Committee which has the authority to review individual cases. It just turns out to do the same kind of provision in pay and price, because the price is more complex, you have to have more emphasis on that. You have complex accounting and you have the whole problem of indexing of numbers.

Senator SCHMITT. You are basically assuming that the marketplace works in the case of pay, but doesn't work in the case of price; is that correct?

Mr. KAHN. No, I don't really believe that. I believe that there are serious imperfections in both markets. It is just the monitoring of pay is not technically as difficult as price. You have a single contract involving 120,000 or 200,000 workers, and with a couple of analysts you can keep abreast of it.

MARKET CONCENTRATION

Senator SCHMITT. Your marketplace works better in lower levels, in the small companies, the medium-sized; that is where the competition is gray. Why are we lowering that threshold? Why don't we keep working where the marketplace does have imperfections, and that is where you have concentration in a few large companies.

Mr. KAHN. That is why we are planning to go below $100 million. The $100 million is not absolute, but in particular markets you may find $100 million will involve in some cases companies with a great deal of market power, because it isn't he alone but a number of sellers. In a couple of companies $150 million may dominate that market. Also, with 2,900 companies out of 10 million, we get something like 70 percent of the total value added in industry.

Mr. RUSSELL. We estimate with a threshold of $250 million in sales we cover over half of the gross national product, perhaps some 60 percent. We don't know exactly how much of the GNP we will cover from lowering the threshold.

Senator SCHMITT. The real question is are you covering in the $250 million those companies that may have the greatest impact on unreasonable prices or do you have to go to $100 million in order to gain that kind of control or ability?

Mr. RUSSELL. In our monitoring efforts, Senator, which have traditionally in the past extended beyond those directly monitored companies of $250 million or more in sales, we have found significant discretionary market power for much smaller firms.

Senator SCHMITT. But I am talking about the total impact on inflation, and I realize the impact of a small company may be gray in a small area or particular commodity. Since we are going to put restraints on you in terms of your expenditures and travel, you have to look at where can the staff be most effective. It still would seem to me that that would be in the area of where market concentration exists on a national scale rather than a particular commodity or goods or services. It covers the entire country.

Mr. RUSSELL. Many of our problem areas are in commodities characterized by local markets. Many building materials, such as cement—which is a real factor in increasing costs in building a house—tend to be locally concentrated markets. In many cases the market is dominated by a company with less than $250 million in sales.

RECESSION

Senator SCHMITT. Every recession we have further increases that concentration. So you may be fighting yourself.

Mr. KAHN. None of us is standing on the sidelines or frontlines rooting for a deeper recession.

Senator SCHMITT. Deep, deep recession. I am afraid you got it.

Mr. KAHN. We never had a choice. If we had let inflation go wild, we would have an even worse recession. Indeed, the proof of that is the high interest rates.

Senator SCHMITT. This is not the place to debate, but I think you did have a choice.

AFL-CIO

Senator CHILES. I notice a recent report says the AFL-CIO has called for termination of the Council on Wage and Price Stability. I trust you don't agree with that recommendation. But since your program is voluntary and depends upon the cooperation from business and labor, how effective can the program be without support from the AFL-CIO?

Mr. KAHN. Well, it was because we felt that it would not be effective, as the CPI increases at the 13-percent level, to have a program without labor support, that we went to such lengths to induce cooperation by the leaders of organized labor. They sit on our Pay Advisory Committee, and they have accepted the responsibility of working to insure restraint. I know that some officials of the AFL-CIO, not the top officials—indeed, I know of just one—have called for abolishing CWPS, and I would argue that call is very good argument for our continuance, indeed, one of the best arguments I can think of.

Senator CHILES. I can't top that. We will have a few more questions for you for the record.

BEEF PRICES

Senator SCHMITT. Mr. Chairman, we will also have some questions for the record.

Let me though bring up something. I have some very unhappy beef producers in New Mexico. I believe on the "Today Show" you advised consumers to buy pork and chicken, and then you sent a telegram out clarifying that. We have that and we will submit that for you. You admit in that telegram, or at least you have admitted, that sales are down and costs up for the cattle industry.

Mr. KAHN. Of course.

Senator SCHMITT. Wouldn't your advice to consumers have the effect of lowering supplies and increasing prices further?

Mr. KAHN. It is a delicate question which I explored a little bit in the telegram. To what extent do you advise people not to be guided by what has happened to the relative prices of beef, on the one side, and poultry and pork, on the other. If they ask you, as they did me on the program, what should we do to protect ourselves from inflation, I gather the cattlemen have no objection to my saying, "Be careful."

Senator SCHMITT. Be a smart buyer. But they have objected when you draw a discriminatory value between them, and particularly since it is such a volatile situation. I hope that the administration will not do that and just keep giving common sense advice like "Look before you leap."

Mr. KAHN. I have a new one, Senator. We have recipes now for making things out of hamburger which we used to make out of steak. So we will still be buying beef.

Senator SCHMITT. Again, I would leave that to the housewife to make that decision. Just be a wise shopper. They know how to be wise shoppers. And you can distort local and regional and even national economies by giving the wrong piece of advice.

Mr. KAHN. I am certainly aware of the dangers of reduction in supplies.

STAFF OF CWPS

Senator SCHMITT. How many of these new staffers will you anticipate will be actual economists in view of your statement to the Wall Street Journal which was something to the effect, "I am tempted to say, any economist who wants to come to work in this program, I wouldn't want."

Mr. KAHN. Bob, can you handle the factual question and I will try to handle the rhetoric?

Mr. RUSSELL. Here are two economists who came to work in this program. Indeed, all of the expanded staff in the planning, policy and evaluation division will be economists. In addition, perhaps 1 out of 10 or more of the new hirees in the price monitoring division will be economists. Most of those won't have Ph. D.'s; for the most part they are analysts with background in accounting, mathematics, statistics, finance, many different areas. We have room for a wide variety of talent.

Senator SCHMITT. Shouldn't you be bringing in people who are knowledgeable about the various industries and labor markets with which you will be dealing rather than looking for academic types?

Mr. RUSSELL. Academic types sometimes are knowledgeable about industries because they do study businesses and industries.

Senator SCHMITT. But you don't find a great deal of confidence in them out in the real working world.

Mr. RUSSELL. Again, you put us in a tenuous position of being misplaced academics.

Senator SCHMITT. At least Mr. Kahn has a significant amount of experience in the utility industry and gained the respect of that industry.

Mr. KAHN. Senator, I find with the heads of large corporations with whom Bob and I pass a good deal of time, none of us yet has suggested we are stupid. The exposure I have had to the intricacies in the accounting field in the last week I think qualified me for a CPA. It is possible for a well trained economist to really understand this.

Senator SCHMITT. I don't have any question it is possible. I am just wondering if you don't need, particularly since you are trying to get up to speed, a good mix.

Mr. RUSSELL. That is what our recruitment strategy is.

Senator SCHMITT. Do you agree with Murray Weidenbaum that the cost of regulation to the private sector is something now over $100 million annually?

Mr. KAHN. I am sorry, I have never felt it worthwhile to evaluate his estimate, because it doesn't have any real meaning for me at all. I think it is a nonsense number. From the point of view of policy, the only significant question is whether the benefits of any outlays exceed the costs or not, and more precisely whether the marginal costs exceed the indirect costs. I just have to give my ignorance on the subject. It doesn't have any meaning for me.

Senator SCHMITT. You supported actively airline deregulation. You do trucking deregulation on a case-by-case basis to evaluate a general area of a regulation and the entire regulatory environment. In that context have you made any estimate of what the various proposals for deregulation of communications would have on inflation?

COMMUNICATIONS DEREGULATION

Mr. KAHN. No; I don't know of studies of that that are anywhere near as definitive as the estimates that were made in the airline and trucking cases. I suspect, Senator, because it is so much more a problem of technology, because you are dealing not so much with introduction of competition into industries of a given or known technology, what you are talking about in communications is a problem of rapidly changing technology.

Senator SCHMITT. Yes, but there are certain parts that are known and will be stable for at least a decade, such as broadcasting. Radio broadcasting seems to be fairly stable.

Mr. KAHN. Oh, yes.

Senator SCHMITT. Do you have any intention to have some of these new staff people start to look at those kinds of issues in a hurry? Certainly this is one that is before the Congress. The FCC has moved to essentially usurp congressional action on this. I think there are going to be a number of people concerned about that and trying to move forward this year. It would be a great help to us if at least in part of the communications deregulation effort you could provide some of the same kinds of information you did for the other two areas.

Mr. KAHN. I certainly will look into it. As I said, I am not aware of studies that have been done.

Senator SCHMITT. Mr. Chairman, we will have some other questions.

Senator CHILES. And so will we. We thank you for your appearance.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

NEED FOR AUTHORIZING LEGISLATION

The authorization for the Council on Wage and Price Stability expires at the end of this fiscal year. What is the status of the needed authorizing legislation?

Both the House and Senate Banking Committees have held hearings on the Council's reauthorization. The Senate Banking Committee has scheduled markup for May 5, and we expect House Subcommittee and full Committee markup to follow very shortly, obviously before May 15.

NEW PAY STANDARD

The new pay standards that were announced as a part of the President's anti-inflation program last month were for pay increases in the range of 7.5% to 9.5%. The pay standards last year were 7.0% and we were told that would be reduced over time to help "squeeze out inflation."

Instead of "squeezing out inflation" it looks like the pay standard is "floating on the wave of inflation." Why were the pay standards adjusted upwards?

A review of published earnings series and private surveys and the Council's own monitoring efforts indicate there was substantial cooperation with the first pay standard.

Throughout the first program year factors outside the scope of the Council's monitoring activities operated to dramatically escalate the rate of inflation. By the end of the first program year continued cooperation with the pay standard was in jeopardy. To preserve the existing support and to elicit further cooperation from the labor, business and public sectors, the Administration established the Pay Advisory Committee late last September.

The task of the Pay Advisory Committee was to make recommendations concerning the pay standard for the second program year. While the Pay Advisory Committee was reviewing various aspects of the pay standard, the 7-percent first year standard (with modifications) remained in effect and the rate of inflation continued to accelerate. On January 22, the committee recommended a range of 7.5 percent to 9.5 percent for the second year pay standard and on March 13, the Administration accepted this recommendation. In light of recent price increases, the range does imply wage restraint, yet it provides a reasonable limitation which all sectors could support.

1980 SUPPLEMENTAL FOR PAY AND PRICE ADVISORY COMMITTEES (+$516,000)

How much has been spent or obligated in support of the Pay and Price Advisory Committees up to this point?

Obligations incurred through the May meetings of both Advisory Committees:

11.1	Permanent positions	$ 14,150
11.5	Other personnel compensation	55,290
12.1	Personnel benefits	4,355
21.0	Travel and transportation of persons	103,196
23.1	Standard level user charges	4,381
23.2	Communications, utilities, and other rent	1,021
24.0	Printing and reproduction	17,418
26.0	Supplies and materials	1,172
31.0	Equipment	2,127
	Total Obligations	$203,110

Why couldn't this small amount be absorbed within the base?

The establishment of these Pay and Price Advisory Committees was, of course, totally unanticipated when we requested and received our FY 1980 appropriations, and it has already imposed some expenses that the Council cannot meet within those appropriations. The largest share of the supplemental budget request is for travel expenses ($206,000). Since the Council's own travel budget for FY 1980 is currently limited by Appropriation Law to $137,000, it obviously cannot cover the projected travel costs of $206,000 for members of the Advisory Committees.

What is the need for additional positions for this program?

The FY 1980 budget makes no allowances for professional support to do research and write background reports and issues papers at the Committees' request. Nor did it anticipate the need for additional secretarial staff. We are, therefore, requesting four additional positions and monies for permanent professional (2) and secretarial (2) staff members. This will relieve the Council of the need to provide personnel to the Committees from its own staff, and will help to eliminate the additional workload we have been incurring because of the work generated by both Committees.

A part of this request is $7,000 for furniture. What efforts have been made to obtain excess of surplus furniture out of GSA warehouses?

CSA and other agencies' surplus will be utilized for any available furnishings and equipment and only what is absolutely necessary will be purchased. We are currently reviewing excess furniture of other agencies.

Last year the Council relied on funding advances from the President's Unanticipated Needs Account. Has a request been made for the use of the Unanticipated Needs Funds to finance the Pay and Price Advisory Councils?

We have requested and received a funding advance of $100,000 from the President's Unanticipated Needs Fund to provide interim financing for the travel of the Pay and Price Advisory Committees.

FURNITURE

How much is included in the 1981 Budget proposal for the purchase of furniture? How much is in the 1980 Budget?

GSA and other agencies' surplus will be utilized for any available furnishings and only what is absolutely necessary will be purchased. However, the additional 250 new employees in FY 1980 and 150 additional employees in FY 1981 will require the purchase of a certain amount of furniture that cannot be obtained from other agencies.

The following table summarizes the furniture costs projected by the Council:

	1980 with Pending Supplemental	1980 Revised Estimate	1980 Proposed Supplemental
Estimated costs for office furniture			
Replace of existing furniture and the acquisition of furniture and fixtures for:			
- professional staff	$23,000	$163,400	$140,000
- clerical staff	11,000	26,600	15,600

	1981 Request Pending	1981 Proposed Amendment	1981 Revised Estimate
Estimated costs for office furniture			
Replace of existing furniture and the acquisition of furniture and fixtures for:			
- professional staff	$27,000	$101,400	$128,400
- clerical staff	15,000	37,600	52,600

CENTRAL COMPUTER SUPPORT

Has the Office of Administration provided COWPS with any computer or information management services over the last year? If so, what services were provided? What were the charges and how were they financed?

No computer or information management services were provided to the Council by the Office of Administration over the last year. Development costs were minimized by the selection of vendors who already had comparable operational systems that could be adapted to Council requirements. These vendors have the capability to greatly expand Council usage of these systems at favorable rates for the expected humongous increase in volume. The Office of

Administration's computer has, however, been actively utilized to provide statistical services (regression analysis) in the development of wage information.

Has the Office of Administration to your knowledge requested any funds in 1981 for the specific purpose of providing computer or information management services to the Council on Wage and Price Stability?

Not to our knowledge. Any computer or information management services provided to the Council by the Office of Administration would be procured at on a cost reimbursable basis.

Are there any funds in the Council's budget that will be used to procure such services from the Office of Administration?

Requested funds will be used to procure computer or information management services from vendors, including the Office of Administration, that provide the most favorable rates. As stated previously the selection of vendors and related costs are influenced by comparable operational systems that could adapted to the Council's need.

COUNCIL OF ECONOMIC ADVISERS

STATEMENT OF CHARLES SCHULTZE, CHAIRMAN, COUNCIL OF ECONOMIC ADVISERS

PREPARED STATEMENT

Senator CHILES. The committee will now receive testimony from the Council of Economic Advisers regarding their fiscal year 1981 request and 1980 supplemental. We are pleased to have Mr. Charles Schultze, the Chairman of the Council of Economic Advisers, with us to present their request.

Mr. Schultze, your prepared statement will be placed in the record in full, if you could give the highlights.

[The statement follows:]

STATEMENT OF CHARLES L. SCHULTZE

I am pleased to appear before you to discuss the budget request of the Council of Economic Advisers for fiscal year 1981. I will keep my prepared remarks brief, so that I can make myself available for your questions.

The Council of Economic Advisers was created by the Employment Act of 1946 to provide economic analysis and advice to the President and thus to assist in fulfilling the mandate of the Employment Act "to promote maximum employment, production, and purchasing power." The Council's principal purposes are to assist in the development and implementation of national economic policies that will ensure the achievement of the goals of the Employment Act and to provide advice with regard to decisions on other matters that affect the health and operations of the nation's economy.

Over the years the functions of the Council have broadened with the recognition that many "noneconomic" decisions have major consequences for our economy. The Council is involved not only in the development of fiscal policy but also in the Administration's efforts in regulation reform and in the development of international economic policies and of our energy policies. Of course we have been deeply involved in the anti-inflation effort which must succeed if we are to protect the advances we have made in the past in providing more jobs and a higher standard of living for our people. In addition, we participate fully in the development of major programmatic proposals of the Administration -- whether it be welfare reform or health insurance or tax policy.

The enactment of the Full Employment and Balanced Growth Act of 1978 revised for the first time the chartering legislation for the Council of Economic Advisers. Although the basic mission of the Council remains unchanged, the Humphrey-Hawkins Act recognizes explicitly the broadened role of the Council and provides an important framework within which the government operates to pursue policies toward our economic objectives.

The Full Employment and Balanced Growth Act retained the requirement, originally set forth by the Employment Act of 1946, that the President submit a report to the Congress each year on the state of the economy. However, the Humphrey-Hawkins Act requires new information to be included in the Economic Report of the President. These increased responsibilities are reflected in both the 1979 and 1980 Reports. They will continue in future years.

Despite the expansion of the functions of the Council over the years, our staff has remained small and of extraordinarily high quality. This is how it should be. The budget we have requested for fiscal year 1981 is structured to continue that tradition.

The Council of Economic Advisers is requesting a total appropriation of $2,171,000 in fiscal year 1981 to provide for a staff of 36 professional and support employees. This budget request reflects an increase in 1981 of $69,000 over 1980. This 1981 request is 2 percent lower than the request originally submitted in January. In line with the President's reductions in the fiscal year 1981 budget, the Council of Economic Advisers like other government offices is cutting administrative and operating expenses.

In the remainder of my remarks, I would like to explain to you some items in the Council of Economic Advisers' 1981 budget request.

CEA Personnel Requirements

The budget request for 1981 reflects an increase of $54,000 in compensation as a result of Executive Order 12165, effective in October 1979, $27,000 for upgrading two Junior Economist positions to mid-level Staff Economist positions, and an additional $4,000 for one support staff position. There is a resulting increase of $7,000 in personnel benefits.

Travel

The $28,000 request for travel in 1981 is the same amount received by the Council for this purpose in 1980. The $25,000 shown for 1980 follows a reduction of $3,000 mandated by Public Law 96-86 to reduce funding for travel during 1980.

Operating Expenses

The 2 percent reduction, or $26,000, has been applied to these expenses.

Conclusion

Mr. Chairman, the appropriations we have requested for fiscal year 1981 provide realistically for the needs of the Council of Economic Advisers. The request includes increases where required but is otherwise a lean budget. It reflects our commitment to doing the best possible work in the most efficient manner. I hope that this subcommittee will approve the request. I welcome any questions.

Mr. SCHULTZE. Mr. Chairman, I do have a short statement that I think will take no more than 3 minutes to summarize our budget request.

Mr. Chairman and Senator Schmitt, we are requesting a total appropriation of $2,171,000 in fiscal year 1981 to provide for a staff of 36 professional and support employees. This budget request reflects an increase in 1981 of $69,000 over 1980. For our sins with respect to inflation, we are condemned to absorb most of it. The $69,000 is about a 3.3-percent increase. It is 2 percent lower than the request originally submitted in January in line with the President's general cutback on Government agencies.

Our increase of $69,000 basically consists of an additional $92,000 in personnel and related benefits, principally the pay increase, offset by decreases of $23,000 in other items.

That is the essence of our budget, Mr. Chairman. It is fundamentally additional personnel money, offset in part by some cuts elsewhere. It is up very slightly over last year and only about 6 percent up over 2 years ago. I will be glad to answer questions.

Senator CHILES. Thank you.

The administration is basing its revised budget on a forecast that the unemployment rates will creep up about 1 percent to 7.2 percent in 1980 and stay at that level through 1981. The CBO is a little more pessimistic, with an average of 7.5 percent. I am concerned whether these kinds of predictions are realisitic. A year ago I thought because the indicators were moving at a gradual pace, now, of course, it looks like a boom went on and consumers were spending, and they are now set up for a classic bust, causing housing construction to fall. The automobile industry is in terrible shape, not only serious layoffs in regard to plants, but many of the dealers are going bankrupt now. I am having calls every day from my State saying that is going to cause a spinout as that happens with the garages and mechanics and everything that happens there.

What do you see as the underlying factor of economic strength that would allow the economy to ride this out with a mild recession instead of getting the same kind of rapid downward spiral we experienced in

1975, and how do we get people serious about cutting back without setting off some kind of major reaction?

Mr. SCHULTZE. Good question. First of all, let me start with a confession of the obvious. These are uncertain times and any forecast has to be full of uncertainty. You are quite right in the sense that earlier this year, in particular, the pace of inflation speeded up very substantially. You always run a risk when you take a rough measurement. Nevertheless, I think there are reasons why with some persistence and an average amount of luck—you can't have bad luck, but average luck—we should get through with a moderate economic decline.

I think there are several reasons. First, unlike most recessions, we go into this with very lean inventories. Of course, when sales go down, inventories go down. But unlike 1974, when we experienced a major boom in inventories, with a few exceptions, inventories are down. You don't have an extra downward kick. In the face of some difficult conditions, businesses have maintained pretty good investment management, that is, investment plans. We have seen no evidence of that being chopped away.

We got yesterday or the day before figures on new orders for durable goods. One of the categories that we are most interested in is investment goods, machines and equipment. In general, while it may not set the world on fire, it is still in March above the fourth quarter when you adjust for inflation.

There is no doubt that the housing industry has and will have a significant decline.

Let me note, Mr. Chairman, that the policy of moving toward a balance, and indeed a surplus, in the budget, a policy of relatively firm action, is—after admittedly a couple of bad months—having some success even on the interest rate front. If you have been following interest rates day by day, you will note they have turned in the view of economic cooling off, and I think you see the result in general interest movement in the short-term money market. Those rates are now down 200 or 300 base points.

Senator CHILES. I note yesterday's sales on Treasury bills came off drastically.

Mr. SCHULTZE. The decline in the Treasury rates have been phenomenal. That may be a little misleading. If you look at CD rates and commercial paper rates, they are still down fairly significantly, in my own judgment. It is hard enough to predict what I have to predict, and one is not publicly predicting interest rates. Nevertheless, it is clear we have seen some reversal. And in particular in the second half of this year I think it will come down significantly. That, in turn, is going to help.

I preface all of this by saying with as much openness as I can that there is a lot of uncertainty and it is a risky business, dealing with this kind of inflation, but we believe the program will work to do it. We think there is a chance this general pattern will prove out so long as everyone remembers we have the risk of being wrong.

Senator CHILES. I worked together with you in that 8 days in which we were trying to come up with a series of recommendations that led to the announcement by the President in the anti-inflation program of re-calling the budget. I know of the strong commitment by the administration officials to try to break the back of the inflationary problem. At the same time we recognize that we are running the risk with this monetary and fiscal restraint that one outcome could be an economic situation that could drastically worsen and unemployment could really begin to increase. How high do you believe that the administration is going to permit the unemployment rate to rise before it reverses itself in the war against inflation and becomes the war to stimulate the economy?

Mr. SCHULTZE. Let me make two comments with respect to that. First, there isn't any number. You can't, in all responsibility, cite any number. For example, a relatively moderate creep up in unemployment but with all the signs that there was no hope in sight, with investment beginning to fall out of bed but not yet seen in employment, that has one implication. On the other hand, a rapid run up in unemployment where you see that something was starting to turn around, a much larger number would be a different thing.

My first proposition is I can't give you a number. It is one of those things you have to monitor. Any given number you have to monitor the whole economy. Second, it seems to me some of that tends, not fully by any means, to get a little bit of its own relief in the sense that one of the things affecting our economy is clearly the level of interest rates—which in a period of high inflation that does happen. But as the economy cools off, those rates come down and in some sense if you get a fast slip in the economy they will tend to come down faster. I am not trying to suggest this self-correction. We know that from history. There are, particularly in the current situation, some partly self-correcting elements involved.

Senator CHILES. I understand that you are saying there is no magic number. And I think it might well be true that the Congress might panic before the administration does in regard to the fight against inflation turning to a fight for stimulation.

Mr. SCHULTZE. I think what is critical both in the short-run and long-run, however various people disagree among themselves as to what to do, is that the long-term growth in Federal spending needs to be controlled. It needs to be controlled strongly and people can then argue about how you proceed from there. I have an impression that very large numbers of the public share that view. My impression, Mr. Chairman, is the Congress shares that view.

Senator CHILES. Do you agree with what everybody else is saying, the recession is finally here, we are in the recession now?

Mr. SCHULTZE. Yes, sir. And I guess I would say that without any qualification, if large numbers of the economic profession hadn't been embarrassed months ago. I think all the signs point that way. It hasn't been going on very long. Therefore, people are somewhat reluctant, myself included, to take universal signs. It would be hard to say anything else but we are in a recession.

Senator CHILES. Senator Schmitt.

Senator SCHMITT. Mr. Chairman, are you familiar with the CIA report of world oil supplies?

Mr. SCHULTZE. Put it this way, I have read it and put it aside to read and study it.

Senator SCHMITT. Since we all agree that oil prices, which could be affected by supply, to a great degree are a major component of inflation, will your group study that in some detail to see if you can get independent analysis? It is an extraordinarily pessimistic document, none of which my geologist friends who have been in the business a long time agree with. The drilling activity we know about in various parts of the world, including the U.S. Alaska offshore, does not support their conclusions. I hope you will look at it closely, because if the administration is going to base policy on that document, we are in serious trouble.

Mr. SCHULTZE. I can't comment on it in any depth because I just skimmed it. We will look at that. We look at independent oil company stuff, the stuff that Chase Bank does.

Second, it is my general impression, however, for broad policy purposes, that if you agree with that statement, or something realistically more optimistic, you are still struck by the need to take action such that in 1990 we have underway substantial investments in alternative sources.

Senator SCHMITT. Nobody is arguing. Our problem is with $80 billion you have to import, you have an extraordinary dependence on the imports. With a naval force that no longer is able, in some people's minds, to guarantee the security of those supplies on the high seas, and certainly cannot counter threats of interdiction at the source, we should at least, it seems to me, as part of our economic policy be evaluating the effect of the rapid development of our own immediate energy resources—oil, gas, coal, atomic—on inflation, not to mention on our own security. Do you expect your group to undertake such analysis?

Mr. SCHULTZE. In effect what we do is take various estimates from various sources, put them into our estimate of what this does to inflation. What we do is make sure we look at what we can get our hands on in terms of what the experts in and out of Government say. We have one person who spends part-time solely on energy. What we do is take that and put it into what the overall impact is.

Senator SCHMITT. My point is that many would say that over the next 5 years contrary to the CIA, a rapid acceleration in the expansion of domestic energy resources, commensurate with environmental concerns, but satisfying those concerns rapidly, we could regain control of the world price of oil.

Mr. SCHULTZE. I have some doubt.

Senator SCHMITT. What I am suggesting to you is you probably ought to, in your evaluation of the CIA report, get some people in who are knowledgeable about what the current potential is. For example, it is my understanding that that report ignores what is now in the overthrust belt, which for the last 5 years has been the center of tremendous activity and successful activity. It averages the major sedimentary basins, besides Prudhoe Bay in Alaska, something like 14 other sedimentary basins. It ignores the Sudan where there are major discoveries coming in. These kinds of things have to be the basis of our policy, and how do we gain control over what the administration says is the major component in inflation.

Mr. SCHULTZE. I think all those cases you are talking about require a greater leadtime in order to come about in 1985.

Senator SCHMITT. You would be surprised how fast they can come into being. It hasn't because the administration has settled on a policy opposed to this development.

Mr. SCHULTZE. I would disagree.

Senator SCHMITT. No, but you haven't decontrolled the regulation that prevents them from happening.

Mr. SCHULTZE. Some we have. I think we struck a relatively good balance.

Senator SCHMITT. The balance is not commensurate with what you are saying is the effect of energy prices on inflation. If you really want to remove that effect, you would begin producing as fast as humanly possible.

Mr. SCHULTZE. In some sense that is right. On the other hand, if I wanted to get rid of inflation within about 2 years, I can do it if I had no other objective.

Senator SCHMITT. How?

Mr. SCHULTZE. Go back to the 1930's. I would use 35 percent unemployment. My only point is you do have to balance.

Senator SCHMITT. That is also one of our answers to unemployment.

Mr. SCHULTZE. I agree. I am saying it is a very difficult balance to strike in some cases where you have major environmental consequences. You and I may agree we should shift the balance further.

Senator SCHMITT. Could I just make a suggestion that when you decide as a group to evaluate that energy report and other questions of how do you lick the energy component of inflation, maybe you gather a few of the knowledgeable people on the Hill and other places for informal discussions, and I think you would find it surprising of what is happening and what could happen in a very short period of time.

Mr. SCHULTZE. Yes, sir.

Senator SCHMITT. Do you as a group evaluate the impact of Federal investments that over a longer term can be deflationary, that is, such new goods and services in the private sector? A good example of the long-term investment is aeronautics that provided through Defense and NASA a base for an industry that is still the premier industry in the world in that area. For instance, investments in health research that will reduce future costs to Government, nutrition and so forth. Do you plan to look at investments of that kind and their economic impact?

Mr. SCHULTZE. Again, as much as possible, and we look comprehensively at various things that help in reducing inflation. One of them is the potential of Government investment in research and development. I have to confess the relationship between any given action and the impact on inflation is often something you have to take on faith. But we try to look at it scientifically.

Senator SCHMITT. Well, the history is pretty clear, and you have to rely on what history tells.

Mr. SCHULTZE. Some do and some don't. You have to be very careful.

Senator SCHMITT. I am not asking you to look at specifics. I think you have to look at general categories knowing some are going to pan out and others aren't. The history is clear in the broad average involved.

Mr. SCHULTZE. The paradox is—and I am reflecting out loud—many of the things the Government did, looked at solely from the economic view, tended to be wasteful, but had side effects.

Senator SCHMITT. Such as?

Mr. SCHULTZE. The aircraft industry sprang from what was fundamentally uneconomic investment. The space program, the Manhattan project—we did all those apart from an economic program.

Senator SCHMITT. Let me give you one where that is not the case, agriculture.

Mr. SCHULTZE. The secret of how you do that I wish I knew, because agriculture was done differently. You are correct. For example, the Extension Service and what it has done.

Senator SCHMITT. All I am saying is we look at each area and decide what is the best way to do it. For example, right now you have a situation in the automobile industry where you have an established industry that is sorely in need of a new technological base. It is very probable that that is analogous to the military base in aeronautics, with the Government deciding to make that more commercial by ONACA activities. It could be that model would be applied to the automobile industry. On the other hand, on the energy conservation side you might better apply the agriculture model. Since it is disbursed in the economy, it is new ideas that everybody has to apply simultaneously.

Mr. SCHULTZE. Senator, the problem is that the Federal Government—it has no bearing on Republican or Democratic—the Federal Government in general does not generally know how to do these things well. When we go out of the way to do it for commercial purposes, we usually screw it up.

Senator SCHMITT. I couldn't agree with you more. All I am suggesting is you already have some successful experiments. Let's look at what has worked and see if there are comparable areas in the economy where they can work again.

Mr. SCHULTZE. I couldn't agree more. I just put a caution up.

Senator SCHMITT. I put the same cautions, me above all.

Mr. SCHULTZE. I reflected for some time just what it was that made the Extension Service in particular work—I am not sure I know—in terms of trying to duplicate that. We have tried to duplicate things.

Senator SCHMITT. The idea was to duplicate with an energy extension service. The difference is the energy extension reports to Washington and the agriculture extension reports to the land grant colleges, and that is a major difference. That means you are close to the source of the research and information that is appropriate in agriculture. And if we had organized that so the Extension Service county agents reported through some structure that ended up with the decisions being made in Washington, I don't think it would have worked. I am afraid the energy extension service is not going to work for the same reason.

Mr. SCHULTZE. One of the other reasons—here I am guessing—is maybe it takes 20 or 30 years. I am not sure people knew for 20 or 30 years how the Extension Service would work.

Senator SCHMITT. We may be impatient. I think we may be better off using that for a disbursed need. Energy conservation is a disbursed need, as was agriculture in the days when the land grant colleges and Extension Service was created, and that has changed, but you still continue it. The county agent system works very well and is very well received by our constituents, whereas right now the energy extension service, with a few people in Santa Fe trying to serve the needs of the entire State reporting to Washington for their decisions. Nobody thinks of doing anything more than they are doing.

There will be other questions for the record. We appreciate your attendance and patience with the committee.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

The Economy Continues to be Stronger than Predicted/Long Projected Recession for 1979 Never Materialized

Q. Starting late in 1978 we had frequent forecasts that predicted recessions for 1979. One important reason that we were able to avoid that long forecast recession in 1979 was that the personal savings rate continues to decline as people spend both because of inflationary expectations and also to maintain their standard of living. As the level of personal savings is at an all time low, have we in an aggregate sense lost our ability to postpone future recessions by using personal savings to maintain aggregate demand?

A. Recessions are not generally avoided by reducing personal savings. This was a unique situation. Our ability to ward off recessions depends most importantly on our ability to control inflation and to avoid distortions in our economy. If we follow cautious and prudent fiscal and monetary policies, there is no reason we should not be optimistic about the future of our economy. However, no one can guarantee a recession-free future.

Q. What do you think of Alan Greenspan's argument that a lot of the normal savings has just been shifted into greater value of housing, as housing prices have gone up?

A. It is likely that the accumulation of wealth in the form of increased house prices has added to the willingness of individuals to spend out of current income. And their ability to get mortgage money due to this increased equity has undoubtedly helped people to do so. Although these kind of decisions may make sense on the individual level, it is still important for our society to have savings to invest in business capital formation.

Q. If you sell a house at $20,000 profit and put that profit into greater equity in your next home, isn't that a form of savings?

A. It is true that if you put the profit from the sale of a house into a new home, you have conserved your capital rather than spent it. However, this does not add to the total funds available for investment in the same way that funds held back from current consumption do.

Q. Over the last week the Department of Commerce has released rather gloomy statistics which suggest that we are now in a recession. Do you believe that we are now in a recession?

How serious will it be and how long will it last?

A. As I stated during the hearing, I do believe that we are now in a recession. For the reasons I discussed at the hearing, I think there is a very good chance that it will be a fairly mild and short-lived recession.

Long-Term Economic Structural Changes Needed

Q. The President's anti-inflation program announced last month discussed long-term structural changes that are needed in the economy. These changes related primarily to deregulation of several industries, tax measures to spur productivity, and legislation that would permit the gradual lifting of the ceiling that limits the return most small savers can now earn. A point that we have all come to recognize is that Americans are now saving only 3% of their earnings and past savings are being drawn down in order to maintain our standard of living in the fact of 20% inflation rates.

How effective do you believe increasing the interest rates that small savers can earn will be in actually increasing the rate of savings of the average American?

A. It is important to recognize that people do not save just to earn interest. However, when interest rates are far below the rate of inflation, there is a positive disincentive for individuals to save. We must work at this from both ends -- by bringing interest rates up to a point where the real value of assets is not constantly declining and by bringing inflation down.

Q. Again, do you see evidence that people are going to respond to the government's signal that we are in for hard times and cut back on their spending?

A. We have seen evidence recently that retail sales are slowing. There are a number of reasons for this -- likely including the squeeze in consumer purchasing power.

Furniture

Q. How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget?

A. CEA's fiscal 1981 budget proposal includes the sum of $10,000 for the furniture and equipment account. Since we spend a minimal amount for furniture replacement items, we have reduced this account by $4,000 from the $14,000 appropriated in fiscal 1980. This $4,000 is a portion of CEA's total reduction in keeping with the President's revisions in the fiscal 1981 budget.

Central Computer Support

Q. Has the Office of Administration provided CEA with any computer or information management services over the last year? If so, what services were provided? What were the charges and how were they financed?

A. We have not used the OA computer center this past year but we have made use of the information management services, such as the library and records management. We were not charged for these services since they were funded by OA.

Q. Has the Office of Administration to your knowledge requested any funds in 1981 for the specific purpose of providing computer or information management services to CEA?

A. OA is requesting funding to operate hardware in the EOP computer center available to all EOP users in 1981. They also will be providing from their funds library and records management services to all of the agencies of EOP.

Q. Are there any funds in the CEA budget that will be used to procure such services from the Office of Administration?

A. CEA has earmarked up to $15,000 for any systems development service which may be requested from OA in fiscal 1981. However, as in the past, the bulk of our computer funds will be used for commercial systems.

QUESTIONS SUBMITTED BY SENATOR SCHMITT

Question

1. Last year, Mr. Schultze, I asked you, "Don't you think, Mr. Schultze, that the Administration has, in fact, lost the battle of inflation over the last two years?" Your answer, Mr. Schultze, was "no, sir." Do you still stick by that answer?

Answer

Yes.

Question

2. You will admit your Administration started with a 4.8 percent inflation rate and now what do we have, Mr. Schultze?

Answer

The Consumer Price Index increased 13.3 percent between December 1978 and December 1979.

Question

3. Would you care to give us a forecast of the inflation rate for the balance of 1980?

Answer

The Administration's official forecast is contained in the budget document submitted to the Congress on March 31. Our forecast for the change in the Consumer Price Index between the fourth quarter of 1979 and the fourth quarter of 1980 is 12.8 percent. We expect the GNP deflator over the same period to be 10.4 percent. We do not publish month-by-month or quarter-by-quarter forecasts. Obviously, we expect the rate of inflation to slow in the second half of 1980.

Question

4. Labor Secretary Marshall (in a speech to the National Alliance of Businessmen) recommended a major expansion of Federally financed jobs to reduce unemployment. Will more Federal spending to create jobs, as advocated by Secretary Marshall, push up the inflation rate?

Answer

The President's budget was carefully designed to balance Federal spending restraint with other policies to achieve our goals of reducing inflation and maintaining a strong economy.

We do believe that carefully targeted and well-administered programs to aid the structurally unemployed (such as Title II-D of CETA) will not add to inflation and can, indeed, help inflation by making workers more productive. At the same time, these programs must be funded in the context of overall budget objectives. We believe the current Administration requests strike the appropriate balance.

Question

5. A survey conducted by the U.S. Conference of Mayors shows more than three out of four of the Nations larger cities are facing or soon will face financial problems, and would suffer from a cut in revenue sharing grants to the states. How have you advised the President on the course he should take in possible reducing revenue sharing grants to the states?

Answer

The President was cognizant of the fact that some cities would be hurt by the elimination of revenue sharing to states. Therefore he proposed that this elmination be accompanied by transitional fiscal assistance to those cities which do receive a major share of revenue sharing grants to states.

Question

6. Are we pricing petroleum out of reach of the average American before adequate alternative resources have been developed?

Answer

Most decisions about world oil prices and supplies are made by OPEC -- a group whom we do not control. In the past our society proceeded too long on the assumption that energy -- especially fossil fuels -- was cheap and in never ending supplies. Price controls on domestic energy only contributed to this perception. We are now taking steps, including phased oil price decontrol, to reduce our dependence on imported oil and thus to reduce the vulnerability of our economy and our Nation's security to price and supply decisions of a foreign cartel. At the same time we have put in place a program to develop alternative sources of energy.

Question

7. What do you think the OPEC oil sheiks think of the President's plan to add a $4.62 per barrel import fee on petroleum? Do you have any idea of how many Administration officials have tried to prevent OPEC price increases? How can we justify our pressure on the Saudis to keep their prices at the bottom of the cartel while at the same time imposing a 10¢ per gallon tax increase? Can you tell the Committee how you explained to the President that the proposed 10¢ per gallon tax increase would not be inflationary?

Answer

Many members of OPEC have commented on the American people's unwillingness to take tough actions to reduce dependence on foreign oil. Several of them recently indicated that they understood the conservation objectives of the oil import fee. The oil import fee does have a cost in terms of an immediate inflationary impact for which we receive a longer term anti-inflationary benefit in terms of reduced vulnerability to OPEC price and supply decisions.

SUBCOMMITTEE RECESS

Senator **Schmitt**. The subcommittee will stand in recess until tomorrow morning at 10 a.m., when we will receive additional testimony on the Treasury, Postal Service, and General Government appropriations bill.

[Whereupon, at 12:43 p.m., Wednesday, April 23, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 24.]

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

THURSDAY, APRIL 24, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Present: Senators DeConcini and Schmitt.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE OFFICE

STATEMENT OF HUGH A. CARTER, JR., SPECIAL ASSISTANT TO THE PRESIDENT FOR ADMINISTRATION

ACCOMPANIED BY:

DANIEL MALACHUK, JR., DEPUTY SPECIAL ASSISTANT FOR ADMINISTRATION, WHITE HOUSE OPERATIONS
PHILLIP D. LARSEN, ADMINISTRATIVE OFFICER

BUDGET REQUEST

Senator DECONCINI. Good morning.

Today the committee will hear testimony from eight of the agencies and offices of the Executive Office of the President. These include the White House Office, the Vice President's Office, the Domestic Policy Staff, the National Security Council, and the Office of Administration. The total of the agency requests that we will hear this morning is $44,098,000 and 729 positions.

Because of the time constraints this morning we will need to limit our time with each agency or office to 15 or 20 minutes. In order to meet this schedule and also to go over a number of questions that we will have, it is requested that each witness limit their summary statements to 5 minutes.

The committee will begin this morning by receiving testimony from the White House Office regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $20,373,000 and 351 permanent positions have been requested for fiscal year 1981, and $763,000 has been requested for the fiscal year 1980 supplemental.

The committee is pleased to have Mr. Hugh Carter, Special Assistant to the President for Administration, with us today to present the testimony in support of this request.

Mr. Carter, we will insert any full statement you have in the record at this point.

[The statement follows:]

STATEMENT OF HUGH A. CARTER, JR.

It is indeed a pleasure to appear before you again to discuss the fiscal year 1981 budget request for the White House Office. Before I turn to the details of this request, I would like to express my sincere appreciation to all of you and to the committee staff for your advice and assistance. Your help has certainly made our work much easier, and I look forward to your continued cooperation.

I would like to introduce the members of my staff who are with me today, Mr. Daniel Malachuk, Deputy Special Assistant for White House Operations, and Mr. Phillip Larsen, White House Administrative Officer. I have biographies on each of us, and will be happy to provide them for the record.

The 1981 budget request for the White House Office as originally submitted to Congress on January 28, 1980 was $20,627,000. Subsequently, as part of the President's program to balance the 1981 budget, the budget for the White House Office was reduced to $20,373,000. This revised budget represents an increase of $2,163,000 over the 1980 appropriation as approved to date, and an increase of $1,400,000, (7.4 percent) following your approval of the currently pending pay act supplemental of $763,000. The major increases are primarily in the areas of personnel, Standard Level User Charges, communications, computer services and equipment. The 1981 request continues the permanent full-time staffing level at 351, the same level since fiscal year 1978.

We believe our 1981 budget request represents the minimum necessary to provide adequate direct support to the President. Mr. Chairman, I will be happy to answer any questions you or the committee may have.

Senator DECONCINI. The committee is pleased to have you with us, and you may highlight your statement and introduce the others who are with you.

Mr. CARTER. Mr. Chairman, it is indeed a pleasure to appear before you again to discuss the fiscal year 1981 budget request for the White House Office. Before I turn to the details of this request, I would like to express my sincere appreciation to all of you and to the committee staff for your advice and assistance. Your help has certainly made our work much easier, and I look forward to your continued cooperation.

I would like to introduce the members of my staff who are with me today, Mr. Daniel Malachuk, Deputy Special Assistant for White House Operations, and Mr. Phillip Larsen, White House Administrative Officer. I have biographies on each of us, and I would be happy to provide them for the record.

[The information follows:]

BIOGRAPHY OF HUGH A. CARTER, JR.

Mr. Carter was raised in Plains, Ga., and received his Bachelors of Industrial Engineering from Georgia Institute of Technology in 1964. He earned his MBA from the Wharton School of the University of Pennsylvania in 1968, in the interim serving 2 years as an artillery lieutenant in the U.S. Army.

Following graduation from Wharton in 1968, Mr. Carter joined the John H. Harland Co., a check and forms printing firm based in Atlanta with 32 plants throughout the country. Mr. Carter managed printing plants in Miami and Orlando, Fla., and Greensboro, N.C., and was promoted to District Operations Manager and subsequently corporate vice president in 1976. Since Mr. Carter joined Harland in 1968, the firm has grown from approximately $10MM in annual sales to a current level of over $90MM.

Mr. Carter became active in Jimmy Carter's Presidential campaign in early 1976, servicing as an alternate delegate and staff floor leader at the Democratic National Convention in New York, and subsequently as deputy campaign manager. Following the election, he was appointed by President Jimmy Carter as his Special Assistant for Administration, taking office on January 20, 1977.

The Office of the Special Assistant for Administration is charged with the management of the internal affairs of the White House. It includes approximately 40 percent of the White House Office staff, and is responsible for the $20MM White House budget and for all administrative support to the President and the White House Office staff. In addition, Mr. Carter is also responsible for the operation of the Executive Residence with its own independent budget and 86 employees.

Mr. Carter's assignment also includes overseeing all military support to the President—including Air Force One and Camp David—liaison with former Presidents and their families, and with the U.S. Secret Service. In addition, Mr. Carter serves chief coordinator with the Congress on several legislative matters affecting the President or the White House, such as the White House Authorization Bill, Former President's Act, Presidential Transition Act, and the Presidential Papers Act of 1978.

In addition to his direct White House duties, Mr. Carter is also a member of the President's Commission on Executive Exchange and the President's Management Improvement Council, and served on the Executive Steering Committee for the White House Conference on Small Business. Mr. Carter has also served as a member of the Jaycees, Rotary Club, and Young Democrats.

Mr. Carter is married to the former Glenna Barrett of Pensacola, Fla.

BIOGRAPHY OF DANIEL MALACHUK, JR.

Daniel Malachuk, Jr., was appointed Deputy Special Assistant for Administration—White House Operations on February 1979.

Mr. Malachuk was born on May 23, 1944 and grew up in Northern New Jersey. He received his Bachelor of Arts degree from Hamilton College, served as an officer in the U.S. Navy and received his masters degree from the George Washington University School Government and Business Administration.

From 1970 to 1979, Mr. Malachuk was employed in the consulting division of Arthur Andersen & Co., an international accounting firm. There, he specialized in systems planning and design for both public and private sector clients.

During 1977 and 1978, Mr. Malachuk served as a loan executive to the President's Reorganization Project. Mr. Malachuk resigned from Arthur Andersen & Co. as a senior engagement manager to join the White House staff.

BIOGRAPHY OF PHILLIP D. LARSEN

Phillip Larsen was apointed Administrative Officer for the White House Office on January 1, 1978. His responsibilities include managing White House Office activities in the area of budget, accounting, purchasing, travel, and personnel.

Mr. Larsen was born on July 13, 1942 and grew up in Davey and Lincoln, Neb. He received a Bachelor of Arts degree in Political Science and History from Nebraska Wesleyan University in 1964. Following graduation he did graduate work in Public Administration at the University of Nebraska.

In 1967, Mr. Larsen entered the Federal Service as a Management Intern with the Atomic Energy Commission. He served with the AEC as a Personnel Management Analyst until 1970 when he transferred to the Office of Management and Budget as the Assistant Budget and Management Officer. In 1972, he was selected as the Budget and Management Office in OMB where he served until his appointment with the White House Office on January 1, 1978.

Mr. CARTER. The 1981 budget request for the White House Office as originally submitted to Congress on January 28, 1980, was $20,627,000.

Subsequently, as part of the President's program to balance the 1981 budget, the budget for the White House Office was reduced to $20,373,000. This revised budget represents an increase of $2,163,000 over the 1980 appropriation as approved to date, and an increase of $1,400,000, or 7.4 percent, following your approval of the currently pending pay act supplemental of $763,000. The major increases are primarily in the areas of personnel, standard level user charges, communications, computer services, and equipment. The 1981 request continues the permanent full-time staffing level at 351, the same level since fiscal year 1978.

We believe our 1981 budget request represents the minimum necessary to provide adequate direct support to the President.

Mr. Chairman, I will be happy to answer any questions you or the committee may have.

Senator DeConcini. Thank you, Mr. Carter. We have a number of questions. Some of them we will submit for your answers.

USE OF DETAILEES

But I do have a question regarding some recent newspaper accounts of detailees or people assigned from other executive branch agencies to the White House for use by the White House staff. According to the story in the Washington Post on February 23, several agencies have been hiring new people for the explicit purpose of assigning those people on detail to the White House. The number of detailees assigned to the White House has increased from 25 to 70 since last summer. This seems to go beyond the previous practice of simply assigning existing agency people to the White House for temporary duty. I realize that this has been done at least back to the Johnson administration, and while not illegal it seems somewhat inconsistent with the President's commitment to avoid playing games with personnel. Isn't this practice of using detailees a rather transparent play to get around the White House personnel ceiling, and why have the number of detailees increased so dramatically since August? Can you give us some answer on that, please?

Mr. Carter. Yes, sir, Mr. Chairman. You are absolutely correct, the number of detailees at the White House has increased since August. We found that starting in the summer of 1979 a number of things began to happen that caused a need for the White House to have some additional help. We increased our efforts to coordinate policy formulation. We went to a chief of staff and staff director concept. We decided that it would be good for us to step up our programs, to build a consensus for the President's programs and to respond better to constituency inquiries.

Shortly after the summer was over, the situation in Iran presented itself to us and has caused considerable additional workload to be placed on the White House Office. So in order to meet what I am hopeful are short-term needs, we turned to the use of what we call short-term detailees. These are detailees that will stay at the White House normally less than 6 months. As I know you are aware, the White House authorization bill, which was signed into law in November 1978, gave the White House the authority to use detailees. If a detailee stays at the White House more than 30 days, we are required to report that detailee to the Congress on an annual basis. We have done that this past year, and of course will do that again this year. After a detailee stays at the White House for more than 180 days in a fiscal year, we have to reimburse for that detailee.

We felt that there was definitely a need for the use of additional detailees. We are using them, and we are being very open to you about what we are doing.

Senator DECONCINI. Excuse me, that reimbursement commences after the 180 days?

Mr. CARTER. That is correct.

Senator DECONCINI. From then on you reimburse. How many detailees are currently at the White House?

Mr. CARTER. Currently, as of March 31, we had 89 detailees.

Senator DECONCINI. How many do you expect to have at the end of the year?

Mr. CARTER. At the end of the year it is difficult to tell because we don't know what is going to happen with the various situations in the world, but I would anticipate that we would wind up this fiscal year within the neighborhood of about a hundred.

LIMITATION ON NONREIMBURSABLE DETAILEES

Senator DECONCINI. And what happens if a detailee is assigned and 180 days comes along, do you ever send them back to the originating agency for a week and then have them come again and commence the time period?

Mr. CARTER. No, sir. If the 180 days ends and we have a need to keep them there, of course, we will keep them there on a reimbursable basis. Normally most of the detailees we have will stay at the White House less than 6 months. A lot of them stay 2, 3, 4, or 5 months. But we cannot get into playing games and sending them back for a week and then bringing them back so we can start the count over.

Senator DECONCINI. Do you have a control procedure for that?

Mr. CARTER. Yes, sir, we do. The law states that if a person is at the White House on a detail for more than 180 days they become reimbursable. That is within any one fiscal year. If an individual is there for, say, 5 months and goes away for 1 month and comes back for 3 months, that accumulates. As soon as that person goes over 180 days, we start reimbursing.

Senator DECONCINI. We notice in the supplemental $763,000 is requested for the pay supplemental for the White House Office. What portion of this total pay cost requirement has been absorbed within the base?

Mr. CARTER. Not any, sir.

Senator DECONCINI. It was impossible to do that?

Mr. CARTER. Yes, sir, that is correct.

SIZE OF PERMANENT STAFF

I might add, Mr. Chairman, the White House Office permanent employees are still approximately a quarter below what they were when President Carter came into office.

Senator DECONCINI. Can you give me those figures?

Mr. CARTER. Yes, sir. The number at the end of March was, I believe, 357. We, of course, will be at 351 at the end of the fiscal year. It fluctuates between 355 and 357 down to below 340. As of March 31, I believe it was 357.

Senator DECONCINI. How many were there, do you know, in 1977?

NUMBER OF DETAILEES

Mr. CARTER. As of June 30, 1977, there were 477 permanent full-time employees on the White House payroll.

Senator DECONCINI. How many detailees were there, do you know?

Mr. CARTER. On June 30, 1977, there were 17 detailees.

Senator DECONCINI. And now there are 89 detailees?

Mr. CARTER. Yes, sir. But if you take the total number of permanent employees who are on the White House payrolls now and add all others to that—detailees, part time, temporaries—you would get a total as of March 31 of approximately 500. If you look at the figures in 1976, that same number, adding the same categories of people up, the number was 567. In 1975, it was 651. In 1974 it was 629. And you can go all the way to 1970. The 500 that we had on March 31 is lower than any time prior to 1977. In 1977, 1978, and 1979 we had it slightly below 500, and we have eased that total number back up to 500 because we felt we needed the help.

Senator DECONCINI. Do you anticipate a rising number or a leveling in the 500 area?

Mr. CARTER. I think it will level in the 500 area. It may fluctuate a little above or below, but I don't think it will vary considerably.

SIZE OF OTHER EOP AGENCIES

Senator SCHMITT. If the chairman would yield. Does that figure include the Office of Administration?

Mr. CARTER. No, sir. The Office of Administration is a separate unit within the Executive Office of the President which has its own separate appropriation.

Senator SCHMITT. But that is a new office.

Mr. CARTER. That is correct, sir.

Senator SCHMITT. And it takes some of the functions that were formerly performed by the White House staff, does it not?

Mr. CARTER. Some of the basic administrative functions that were common to all of the agencies within the Executive Office of the President were collected into the Office of Administration. For instance, payroll, information services, and some basic personnel work were combined into that unit.

Senator SCHMITT. So how many are there in that office?

Mr. CARTER. In the Office of Administration?

Senator SCHMITT. Yes.

Mr. CARTER. I don't know. I understand they will testify later and they can tell you.

EXECUTIVE OFFICE OF THE PRESIDENT STATISTICS

I might add though if you want to make the type of comparison I believe you are alluding to, Senator Schmitt, you would have to look at the total number of people in the entire Executive Office of the President compared to the total number in the Executive Office of the President in each year prior to get a fair basis of comparison.

Senator SCHMITT. Can you make that for us?

Mr. CARTER. I can supply that. I don't have it with me.

Senator SCHMITT. We would appreciate it.

Thank you, Mr. Chairman.

[The information follows:]

EXECUTIVE OFFICE OF THE PRESIDENT

AVERAGE PAID EMPLOYMENT--1970/1977 1/
TABLE COMPENSABLE WORKYEARS--1978/1980

Agency	1970 Actual	1971 Actual	1972 Actual	1973 Actual	1974 Actual	1975 Actual	1976 Actual	1977 Actual	1978 Actual	1979 Actual	1980 Estimate
Compensation of the President	-	-	-	-	-	-	-	-	-	-	-
The White House Office	210 2/	530	519	510	500	529	492	446	390	402	403
Executive Residence	89	86	86	79	72	96	90	83	93	100	100
Special Assistance to the President 3/	36	30	37	32	30	29	27	24	24	25	29
Council of Economic Advisors	49	52	54	48	49	44	40	40	34	38	39
Council on Environmental Quality	-	43	63	68	94	60	96	57	53	49	49
Council on International Economic Policy	34	34	23	-	-	-	-	-	-	-	-
Council on Wage & Price Stability	-	-	-	-	-	17	57	46	52	98	245 4/
Domestic Council	49	29	53	55	29	35	49	39	-	-	-
Domestic Policy Staff	-	-	-	-	-	-	-	-	47	54	55
National Aeronautics & Space Council	21	16	14	15	-	-	-	-	-	-	-
National Council on Marine Resources & Engineering Development	21	15	-	-	-	-	-	-	-	-	-
National Security Council	64	75	76	78	82	89	95	92	68	80	80
Office of Consumer Affairs	-	30	-	-	-	-	-	-	-	-	-
Office of Emergency Preparedness	223	233	260	-	-	-	-	-	-	-	-
Office of Intergovernmental Relations	1.5	5	-	-	-	-	-	-	-	-	-
Office of Administration	-	-	-	-	-	-	-	-	167	192	165
Office of Drug Abuse Policy	-	-	5	7	-	-	-	-	-	-	-
Office of Management and Budget	546	614	679	660	629	640	655	688	600	586	630
Office of Federal Procurement Policy	-	-	-	-	-	4	20	27	27	45	54
Office of Science & Technology	67	70	70	-	-	-	-	-	-	-	-
Office of Science & Technology Policy	-	-	-	-	-	-	-	34	30	33	35
Office of U.S. Trade Representative	21	28	31	41	40	42	50	55	55	42	103
Office of Telecommunications Policy	59	43.4	53	54	54	50	78	58	31	-	-
President's Advisory Council on Executive Oorganization	33	20	-	-	-	-	-	-	-	-	-
Special Action Office for Drug Abuse Prevention	-	-	41	133	100	41	-	-	-	-	-
TOTAL	1,523.5	1,951.4	2,064	1,780	1,639	1,676	1,710	1,689	1,671	1,736	1,988

1/ As stated in the Budget Appendixes for each fiscal year.
2/ Does not include 95 employees paid from Special Projects and 273 full-time detailees
3/ The Vice President's Office
4/ Currently pending before the Congress

Senator DECONCINI. Mr. Carter, we have a couple other questions I will submit to you and you can answer them in writing. I understand you have a reputation of running a tight ship down there. I want to compliment you for that reputation. I think it is very important for the example to be set fiscally from the White House, as difficult as that is with many demands on your resources.

Senator SCHMITT. Mr. Chairman, I thought you had some other questions. Could I ask two or three questions of Mr. Carter?

Senator DECONCINI. Sure, go right ahead.

CAMPAIGN ACTIVITIES

Senator SCHMITT. Can you make a comparison of the numbers of man-hours that individuals on the White House staff devote to campaign activities and those that are supplied by the detailees? Is there any correlation?

Mr. CARTER. I don't have any exact figures with me, Senator Schmitt. I can supply those for the record.

[The information follows:]

From December 10, 1979 to May 2, 1980 there has been a total of 14,920 hours of annual leave or leave-without-pay taken by White House staff for campaign purposes.

Since the start of the fiscal year there has been 61,072 hours of work performed by detailees. During the period December 1979 thru March 1980, 39,536 hours of work were performed by detailees.

Senator SCHMITT. Isn't that part of the reason you need the detailees to make up for the staff that is helping out in the campaign?

Mr. CARTER. Well, sir, as you know the staff accrues their own personal vacation time.

Senator SCHMITT. Some of them are on leave of absences.

Mr. CARTER. The bulk of our staff that has gone and worked on the campaign have used their own vacation time. We have had some staff that have gone on leave of absence without pay to work for the campaign, but that would add up to considerably less man-hours or man-weeks than the ones that have devoted personal vacation to the campaign.

Senator SCHMITT. Let's face it, I think we are all grown up enough to know that a campaign year occupies the attention of the White House staff even when they are not on leaves of absence. That, therefore, means less attention is available for some of these critical problems you alluded to earlier. Doesn't that increase the need for detailees?

Mr. CARTER. I think it would be fair to say—and I will preface that by saying any detailee is hatched, that is, under the Hatch Act—any detailee that comes to the White House to work, by law can only work on official matters. When we have as many people as we do using their vacation time for the campaign, and some taking leave of absence without pay to campaign, it would be fair to say that some of that detailee time does go into official duties that would normally be performed by people who are using their vacation to campaign.

Senator SCHMITT. I appreciate your candor on that.

SPECIAL ASSISTANT FOR ETHNIC AFFAIRS

During the Ford administration there was created an Office of Special Assistant to the President for Ethnic Affairs. It is my understanding that upon taking office President Carter abolished that office, but it has been recently established. What was learned in the first 2 or 3 years of the Carter administration that remphasized the need for that office?

Mr. CARTER. Senator, we found over a period of the 2 or 3 years we did not have enough resources at the White House dedicated to promoting and making the people across the country aware of the President's programs, and we didn't have enough people to handle constituency inquiries that were coming into the White House. So over a period of time since we have been there, we have added some offices that deal with these activities. We added not only a Special Assistant for Ethnic Affairs, but we added a Special Assistant that handles Hispanic affairs, a Special Assistant who works primarily in the area of Jewish affairs, and a Special Assistant who works primarily in the area of black affairs. We recognized that we had a need to reach out and work with some of these groups, and we started doing that not long after we came into office.

WHITE HOUSE NEWSLETTERS

Senator SCHMITT. We have had some information that these offices as well as others in the White House are targeting newsletters at specific groups in the possible voting blocs in the country.

When I was serving on the Senate Ethics Committee, Mr. Chairman, we decided a pattern of that kind of targeting represented misuse of the frank.

Is there targeting of that kind going on, and if so, could you provide the committee with a summary list of the kinds of newsletters that are being targeted, to whom they are being mailed as groups?

Mr. CARTER. We do mail some newsletters. We don't refer to it as targeting. We feel very strongly that the President has an obligation to keep various constituent groups informed about what he is doing and what are the elements of his various programs.

Senator SCHMITT. That is exactly the rationale that was used over here, too.

Mr. CARTER. It is my understanding that a number of Members of the Congress also mail certain things to their constituents. And our newsletters are to tell people about what is happening in Washington.

Senator SCHMITT. My point is, Mr. Carter, we decided that a pattern of targeting of newsletters constitutes a political use of the frank, in contrast with a general newsletter going to a broad-based constituency. You can argue whether that is the right decision, but that was the basic decision of the Senate Ethics Committee. I am asking is a similar targeting used by the White House?

Mr. CARTER. We don't intend it that way. It possibly could appear to be targeted to certain groups because of the nature of some of the newsletters and releases. Other ones go out to what I assume you would describe as a broader base, like the press office releases news summaries that go to media agencies across the country. We have a newsletter that deals with women's affairs. I am not sure if you would refer to those as special interest groups, but they have a pretty broad base. We have another publication that was printed, that has been written about in the newspapers and been on the television, that talked about the programs of the administration. Before one of these newsletters is used, it is run through the General Counsel's Office, who then consults with the Justice Department to make sure that it is legally proper for a newsletter of whatever type to be sent out from the White House. That is one of the first steps before any newsletter is ever issued, to make sure it is considered legal and proper.

Senator DECONCINI. Would the Senator yield?

Senator SCHMITT. Surely.

Senator DECONCINI. If you sent a letter on women's issues, you obviously don't send that to P. E. coaches, if you have such a list, or the Marine Corps Reserve list, right?

Mr. CARTER. No, sir, I don't think so. I think that the mailing list that would be used would be a very broad-based list of women.

Senator DECONCINI. If you were going to do a mailing on urban programs and changes in those programs that you were going to target toward mayors and city council members, you are not apt to send those to a broader group such as educators, are you?

Mr. CARTER. I am not familiar at all with our doing a newsletter as restricted as you are describing here. Some letters, or a group of 300 or 500 letters, may go to a group like you describe, but I think our newsletters would go to a broader based group than you are describing.

Senator DECONCINI. Have those kinds of mailings, Mr. Carter, been going on during the whole tenure of this administration?

Mr. CARTER. Well, some of them have, yes, sir, because I think, for instance, the press office releases and news summaries sent to news organizations across the country have been distributed from the start of the administration. Some of the special constituency offices that we have added since we have been in office have started their own. There is a Hispanic newsletter. There is a women's newsletter. There is one that concerns itself principally with programs that would be of particular interest to the black constituency. But those are about as narrowly defined newsletters as we have.

Senator SCHMITT. That is exactly the kind of pattern that was being used a couple years ago and that the Senate decided it would frown upon. I wonder, would it be possible for us to get a list of the newsletters by topic and group, type of group to which they were mailed, for our record?

Mr. CARTER. Yes, sir.

Senator SCHMITT. And the dates which they were mailed.

Mr. CARTER. I would be happy to provide that. We recently provided that to CBS, and we will give the volume and cost also.

[The information follows:]

Name of Newsletter:

White House News on Women

Mailed to:

Individuals requesting copies
Most Women's Organizations
Federal Agencies

Dates mailed and volume:

April 1979 - 3,000 copies
July 1979 - 3,000 copies
September 1979 - 5,000 copies
November 1979 - 7,000 copies
January 1980 - 7,000 copies
February 1980 - 9,000 copies
March 1980 - 9,000 copies
April 1980 -10,400 copies

The total printing cost of the above is $6,610

Name of Newsletter

News on Hispanic Affairs

Mailed to:

Hispanic Community Organizations
Hispanic elected and appointed officials
Hispanic Broadcast Media
Federal agencies
Individuals requesting copies
Corporations
Hispanic Educators
Hispanic Youth Groups

Dates mailed and volume:

January 1980 - 4,000 copies
February 1980 - 6,500 copies
April 1980 - 9,000 copies

The total printing cost of the above is $1,560

Name of Newsletter

Minority Newsletter

Mailed to:

Minority Groups
Elected officials
Heads of community based organizations
Individuals requesting copies

Dates mailed and volume:

March 1979 - 5,000 copies
May 1979 - 7,000 copies
June 1979 - 7,000 copies
August 1979 - 8,000 copies
November 1979 -10,200 copies
January 1980 - 6,300 copies
Febuary 1980 -10,300 copies
April 1980 - 9,000 copies
April 1980 -11,000 copies

The total printing cost of the above is $12,998

VIDEO/RADIO TAPE SERVICE

Senator SCHMITT. We appreciate that.

In a somewhat related issue, last year I inquired as to the White House radio tape services and video tape service. Are these programs still in use?

Mr. CARTER. I am not quite sure what you are referring to.

Senator SCHMITT. About a year ago or so, you instituted a radio service, and as I recall the news conference at which it was announced, it was done because the White House felt that the radio outlets in the country were not getting an objective view of various issues. Is that service still in place?

Mr. CARTER. Senator, I understand that it is still in use. In order to be positive, I would need to go back and verify that.

Senator SCHMITT. Would you supply then for the record an estimate of the number of stations that are using this service on a regular basis and any other statistical information, such as cost of the service, for the committee?

Mr. CARTER. Yes, sir. If it is still in use, we can provide that to you. I don't have that information here with me.

Senator SCHMITT. On the video tape service, last year you answered there were three or four sets of interviews each month, and we would like to have comparable kind of statistical information about the video tape service.

Mr. CARTER. Very good, sir.

[The information follows:]

Radio Actuality Service

Although raw data on number of calls received is readily available, we cannot extrapolate from that a figure which would reliably indicate the number of regular users. As we pointed out to the Senate last year, the service is a "passive" one -- we have no direct contact with individual callers and therefore cannot identify them. During the past year and a half, the toll-free number has been made available to almost every radio and television station in the country.

Radio actuality service costs (6/1/79 through 3/31/80):

Salary	$17,366.00
Equipment costs	912.60
Telephone costs	25,037.12
Transportation charges	633.45
Tape/supply costs	997.02
Standard Level User Charges (Rent to GSA)	2,474.81
Total	$47,421.00

Calls to radio actuality service:

Total number, 6/1/79 thru 3/31/80	113,146
Total number, 12/4/78 (inception) through 3/31/80	159,499

Video/phone Interview Service

Video/phone interview service costs (6/1/79 through 4/25/80)

Salary	$ 1/
Equipment costs	2/
Telephone costs	3/
Transportation charges	126.00
Tape/supply costs	664.00
Tape shipping costs	3,037.66
Total	$ 3,827.66

1/ Existing White House and State Department personnel facilitate video/phone interviews in conjunction with other duties.

2/ Existing video equipment at the State Department is used in taping White House interviews.

3/ Long-distance calls are made via FTS system on existing conference-call equipment at State Department.

Video/phone interviews conducted (6/1/79 through 4/25/80):

Total number, individual interviews	244
Total number, weekly interview series	42
Total number, different station participants (since program inception)	191

DRUG POLICY

Senator SCHMITT. Finally, is there still an Associate Director for Drug Policy in the White House?

Mr. CARTER. No, sir, not on the White House Office staff. It is my understanding that function has been moved to the Domestic Policy Staff, and that there is an office in the Domestic Policy staff.

Senator SCHMITT. We will discuss that then with Mr. Eizenstat.

Mr. CARTER. Very good.

Senator SCHMITT. Thank you, Mr. Chairman. We may have some more questions for the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

FUNDS REQUESTED FOR TRAVEL

Question: I noticed that $100,000 is requested for travel of the President and an additional $275,000 is requested for general travel. Is any portion of the $275,000 also available for presidential travel? If so, what is the purpose of having two line items -- one displaying travel of the President and one displaying travel and transportation of persons?

Answer: Section 103 of Title 3 of the United States Code as amended by P.L. 95-570 of November 2, 1978 provides "...for or on account of the traveling expenses of the President..." $100,000 "...to be expended at the discretion of the President and accounted for on his certificate solely." This amount is used to pay those expenses of The President and the White House staff that exceed the permissable limits as provided by the Government Travel Regulations. Because of this statutory limitation, this account must be accounted for and displayed in the budget separately.

The item "travel and transportation of persons" covers those travel expenses of White House staff on those occasions where the Government Travel Regulations apply. The amount spent in this category is also limited by Section 501 of Title V of the Executive Office Appropriation Act of 1980.

CHARGES FOR SPACE

Question: An additional $167,000 is requested by the White House for the Standard Level User Charge. Why is the charge for space showing a 9.5% increase?

Answer: $126,000 of the increase is for additional space in the Old Executive Office Building which has been or will be transferred to the White House Office. The remaining $41,000 of the increase is for possible additional space in the OEOB which we anticipate will become available to us in late 1980.

Question: Is the White House paying for the Jackson Place Residence which is assigned to the White House and used primarily for former Presidents within these totals requested?

Answer: The property that you refer to is a townhouse that was assigned to former President Ford for his use as an office during his transition out of the Office. Since former President Ford has ceased to use the townhouse as a transition office, the White House in cooperation with GSA, which actually owns the building and controls it, has kept it open and furnished. It has been used on some occasions by former President Ford when he has been back in town. In addition, it has been used a time or two when the Blair House was not totally sufficient to handle all the visitors from foreign countries. For instance, Mr. Torrijos from Panama stayed there during the occasion of the signing of the Panama Canal Treaty.

We are in agreement with GSA. The White House Office would begin to reimburse GSA for the Standard Level User Charges for that building if it continues to be used as it has been, in fiscal 1981.

CENTRAL COMPUTER SUPPORT

Question: Has the Office of Administration provided the White House Office with any computer or information management services over the last year? If so, what services were provided?

Answer: During the past twelve months, the Office of Administration developed and installed two automated management information systems at the request of the White House Office.

The first is the Speaker Tracking System which records speaking engagements accepted by the Senior White House Staff and Cabinet Members. It contains the name of the speaker, title, department or agency, date, type, location and sponsor of each event.

The second application developed is a contact log for the White House Media Liaison Office. This provides an automated means of tracking media contacts and requests that require some follow-up and the requestor's name, organization, title, address/ location, and phone number.

Question: What were the charges and how were they financed?

Answer: Because the nature of this compuer service was routine, we have not been required to reimburse the Office of Administration.

Question: Has the Office of Administration to your knowledge requested any funds in 1981 for the specific purpose of providing computer or information management service to the White House Office?

Are there any funds in the White House Office budget that will be used to procure such services from OA?

Answer: In reviewing our anticipated systems development requirements with the Office of Administration, we have included $186,000 in our 1981 budget for which we may utilize the services of the Office of Administration.

FURNITURE

Question: How much is included in the 1981 budget proposal for the purchase of furniture?

Answer: The 1981 budget request includes an estimate of $25,000 for the purchase of furniture.

Question: How much is in the 1980 budget request?

Answer: During the first half of FY 1980, we obligated $3,100 for the purchase of replacement furniture and $2,200 for fabrics to recondition old furniture. We expect a similar level of spending during the remainder of the year.

Questions Submitted by Senator Schmitt

Question: How many detailees are on assignment to the White House?

Answer: As of March 31, 1980, there were 89 detailees assigned to the White House Office of which 59 provided clerical support.

Question: Who are they, where do they come from, and where are they assigned?

Answer: The 89 detailees as of March 31, 1980, were from the following 29 agencies:

Department of Health, Education and Welfare
Department of Energy
Department of Justice
Department of State
Federal Trade Commission
Department of the Treasury
Department of Labor
Office of Management and Budget
Department of Defense
Department of Housing and Urban Development
International Communications Agency
Department of Agriculture
Environmental Protection Agency
Civil Aeronautics Board
Federal Home Loan Bank Board
Office of Personnel Management
Department of Transportation
Department of Commerce
Department of Interior
Veterans Administration
General Services Administration
Agency for International Development
Federal Deposit Insurance Corporation
Appalachian Regional Commission
Small Business Administration
ACTION
Federal Mediation and Conciliation Service
White House Conference on Small Business
National Aeronautics and Space Administration

They were assigned to White House Office positions as follows:

Staff Offices - 79

Special Assistant to the President for Ethnics Affairs	2
Counsel to the President	7
Staff Secretary	1
Assistant to the President (Jordan)	6
Assistant to the President and Staff Director	3
Special Assistant to the President (Martin)	6
Assistant to the President for Congressional Liaison	5
Press Secretary to the President	2
Special Assistant to the President for Hispanic Affairs	6
Secretary to the Cabinet and Assistant to the President for Intergovernmental Affairs	3
Director of the Presidential Personnel Office	17
Assistant to the President (Weddington)	8
Assistant to the President (Wexler)	9
Appointments Secretary to the President	1
Intelligence Oversight Board	3

Operating Offices - 10

Operations	2
Personnel	2
Correspondence	6

Question: Who are they and how many paid consultants do you have?

Answer: During the period October 1, 1979 through March 31, 1980, the White House Office employed nine (9) paid consultants. As of March 31, 1980, there were seven (7) paid consultants. In addition, as of March 31, 1980, the White House Office had made periodic use of 35 different individuals for brief assignments of several days each to work on arrangements associated with official trips.

COMPENSATION OF THE PRESIDENT

Senator DECONCINI. Mr. Carter, I understand you are also here to provide testimony in support of $250,000 for fiscal year 1981 for the compensation of the President. We will insert any statement you might have in the record, if you have one. Let me just ask one question.

As you know, $50,000 of the request is for official expenses, and this year for the first time any portion of the $50,000 not used for official expenses must be returned to the Treasury. Prior to this year, and since 1955, the President kept as personal taxable income any portion of the $50,000 not used for official expenses. How much of the $50,000 has been expended this year for official expenses?

OPENING REMARKS

Mr. CARTER. Mr. Chairman, although I don't have a formal statement on the compensation of the President, I would like to make a comment or two, and then I will answer your questions.

The compensation of the President is established at $200,000 per year. It has been at that level for a number of years. The expense account for the President is $50,000. We feel that that is adequate compensation for the President and, of course, have requested those same amounts this year. We are very much in favor of the change that was made in the President's expense account this past year. We feel that it made it much easier for the President to use this account, in the sense that he uses what he needs for official funds and then the remainder reverts to the Treasury. We no longer will have that question that continually came up of his being able to use the unspent balance as part of his income. And we feel to make this change was a very appropriate move on the part of the Congress and we very much support it.

As far as fiscal year 1980, it is my understanding that to date the President has committed approximately $22,000 out of that $50,000 expense account appropriation.

OFFICIAL ENTERTAINMENT

Senator SCHMITT. If the chairman would yield. Does the cost of the entertainment come out of that, White House entertainment?

Mr. CARTER. Some of it does, sir.

Senator SCHMITT. Do you know what the cost to the taxpayer, of entertainment in the White House cost is?

Mr. CARTER. The White House Office budget contains no entertainment costs. Within the compensation of the President appropriation, the only part of that that would be used for entertainment would be the expense account, and not all of the expense account would be used for entertainment.

I may back up there just a minute. There is a $17,000 budget for entertainment in the White House Office, but that is used only for things that happen in the White House Office. The $50,000 expense account could be used for any offical expense, including entertainment at the White House Office, at the Executive Residence or anywhere else. The $17,000 is used principally to buy coffee for meetings, take people to lunch, and those minor types of entertainment expenses that the President or his staff would have right in their offices in the West Wing and old EOB. The major expenses on entertainment you are referring to would be the social functions that occur in the Executive Residence and on the grounds. The principal budget for those types of functions would be contained in the Executive Residence budget. And also some functions, the functions of State, are paid for by the State Department as opposed to the Executive Residence budget. And some of those functions would also, as I said a minute ago, be paid out of the President's expense account.

Senator SCHMITT. Is there any way to get a total of the entertainment expenses planned for fiscal year 1981?

Mr. CARTER. Senator, we never have totaled them all up because they are so split up with different agencies for different functions. There also are a number of functions that are held that are reimbursed by organizations outside the White House. For instance, if a political function is held in the White House, it would be reimbursed, of course, by the campaign or by the Democratic National Committee. We have never made an attempt, and I think it would be pretty difficult to come up with a grand total on what is spent on the varying types of functions in the White House.

Senator SCHMITT. Well, I am surprised to hear you say that, Mr. Carter. I would think that a good accounting system of expenses incurred by the White House or reimbursed to the White House would be something that this Administration would be trying to do.

Mr. CARTER. Well, I will have to say that we have made a number of changes in the Executive Residence, we think for the better, in the organization and structure of it. I think when the testimony is given this morning on the Executive Residence, which is a separate appropriation than that which we are discussing here, they will be able to point out to you the expenditures for labor and food and those types of things.

Senator SCHMITT. But the maximum amount that could be used for entertainment under compensation for the President would be $50,000, is that correct?

Mr. CARTER. That would be the maximum amount in that account. Some of the President's entertainment is paid for out of the Residence budget. The expense account, the $50,000 expense account, is not only for entertainment.

Senator SCHMITT. I understand. Since you don't have any subaccounting, that would be the maximum that could be spent out of that budget.

Mr. CARTER. Out of that appropriation, that is correct. But not all of that would be spent on entertainment.

Senator SCHMITT. And there would be more in the Executive Residence budget and more out of the State Department budget.

Mr. CARTER. Yes.

Senator SCHMITT. And those would be the three major sources of entertainment expenses?

Mr. CARTER. Of Government expenditures made at the White House, yes, sir. Normally we don't give out the expenditures that the State Department makes because activities there that are State activities concern leaders and other officials from foreign countries, and if we publish figures about how much we spent on one function for one country and then we publish figures for how much we spent on a function for another country, if they were not equal, then it could get to be embarrassing not only to the President, but the State Department and this Government and the countries involved. So we prefer to keep some of those figures unpublished.

Senator SCHMITT. Is there an aggregate figure, total, of State Department expenditures?

Mr. CARTER. On the State Department, I could not tell you. I cannot speak for the State Department.

Senator SCHMITT. Well, I understand.

We will maybe check, Mr. Chairman. It seems to me that the taxpayers ought to know approximately what the White House is spending on entertainment. Thank you.

Senator DECONCINI. Mr. Carter, I might have missed it, but is it impossible to tell us how much of the $50,000 has been expended this year for official expenses?

Mr. CARTER. I think so far this year approximately $22,000, Mr. Chairman.

Senator DECONCINI. Mr. Carter, I thank you for your answering and well preparedness. Let me assure we spend just as much time on $100 million expenses of other agencies as we have on the $50,000 of the President.

Mr. CARTER. Thank you.

Senator SCHMITT. Sometimes we spend less on bigger budgets.

DOMESTIC POLICY STAFF

STATEMENT OF STU EIZENSTAT, ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS AND POLICY

ACCOMPANIED BY:

LEE DOGOLOFF, ASSOCIATE DIRECTOR, DRUG ABUSE POLICY
BERT CARP, DEPUTY ASSISTANT DIRECTOR, DOMESTIC POLICY STAFF
BRUCE HOLMBERG, ADMINISTRATIVE OFFICER

BUDGET REQUEST

Senator DECONCINI. The committee will now receive testimony from the Domestic Policy Staff regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $2,927,000 and 50 permanent positions have been requested for fiscal year 1981 and $122,000 has been requested for fiscal year 1980 for the pay supplemental.

The committee is pleased to have Stu Eizenstat, Assistant to the President for Domestic Affairs and Policy, with us today and other people of his staff.

PREPARED STATEMENT

Mr. Eizenstat, we will insert your full statement in the record at this point. The committee would be pleased if you would provide us with a brief highlight.

[The statement follows:]

STATEMENT OF STUART E. EIZENSTAT

I appreciate your having me here to testify on the Domestic Policy Staff budget request for Fiscal Year 1981. I am requesting an appropriation of $2,927,000 for Fiscal Year 1981 to cover the operating expenses of the White House Domestic Policy Staff.

As you may know, this request is part of the President's revised 1981 budget and is lower than the original 1981 request on which I testified before the House appropriations subcommittee in February. At OMB's instruction, we reduced our budget by an amount equal to two percent of our estimated personnel costs for the next year -- $41,000. It is my understanding that this same two percent cut was made by every EOP agency.

Since the beginning of this Administration, the Domestic Policy Staff has been performing the following functions:

-- Providing policy analysis for the President.

-- Coordinating policy development for the President.

-- Coordinating the presentation of domestic policy questions to the President, assuring that all views are fairly represented.

-- Providing advice on domestic policy matters to the President, and advice on the domestic policy implications of budgetary questions to the President and OMB.

-- Coordinating the resolution of issues which arise concerning the Administration's legislative program.

-- Coordinating planning for the Administration's legislative program and other major initiatives.

-- Drafting Presidential messages.

-- Coordinating the monitoring the implementation of Presidential decisions.

In short, my staff and I serve as the President's personal staff for matters of domestic policy. We also serve the

Cabinet and other agencies of government as a vehicle for interagency discussion of policy questions and as a focal point for key policy decisions -- a place where issues can be discussed, clarified, and then submitted to the President for decision. Our policy-making process is designed to ensure that all concerned Cabinet departments and agencies are involved in policy development and that the President receives a helpful decision document.

Another important responsibility of the staff is to provide direction and staff support to the Strategy Council for Drug Abuse Prevention, a congressionally-mandated body consisting of seven Cabinet and six public members.

In addition to our budget request for 1981, I am requesting a supplemental appropriation of $122,000 for Fiscal Year 1980 to cover the full costs of last Fall's cost-of-living increase for Federal employees. If approved, this would bring our FY 80 appropriation from $2,600,000 to a total of $2,722,000. I continue to request authorization for 50 full-time, permanent positions.

I shall be happy to answer your questions concerning these requests.

ORAL STATEMENT

Mr. EIZENSTAT. Thank you, Mr. Chairman, Senator Schmitt. It is a pleasure to have the opportunity to appear again before you.

We are requesting on behalf of the Domestic Policy Staff $2,927,000 for fiscal year 1981. As you know, this is part of our revised March 1981 budget and is therefore slightly lower than the original request I testified on before the House Appropriations subcommittee in February.

At the instruction of OMB, we reduced our budget by an amount equal to 2 percent of our estimated personnel costs for the next year. That is what other EOP agencies did as well. It comes to $41,000 in cuts.

Since the beginning of this administration, we have performed a number of functions, which are set forth in my prepared statement. Perhaps I could summarize it in a sentence by saying we try to serve as the focal point to coordinate and develop domestic policy, assuring all Cabinet offices and all others who have domestic policy recommendations to the President are given a fair and full opportunity to present their views and recommendations to the President, so that at such time as the President makes a domestic policy decision he has before him the views of all relevant agencies, the views of the Congress, budget costs, economic impacts and the likely reception of that particular decision. We serve in a coordinating function for that purpose.

We also serve the Cabinet and other agencies of Government as a vehicle for interagency discussion of policy questions and as a focal point for key policy decisions. We are, in effect, the point at which policy issues can be discussed, clarified, and then ultimately submitted for Presidential decision. We sometimes serve in a mediation function and sometimes in an arbitration function at the agency's request to mediate or arbitrate disputes between agencies that they do not wish to submit to the President.

Another important responsibility for the staff is to provide staff support to the Strategy Council for Drug Abuse Prevention, which is a congressionally mandated body consisting of seven Cabinet officers and six public members. I might add, Mr. Chairman, because of the earlier question addressed to Mr. Carter, that the drug policy staff is a part of the Domestic Policy Staff, and the reason for that is that under the first reorganization plan submitted to the Congress and passed in 1977, the Office of Drug Abuse Policy, which was then a separate entity within the Executive Office of the President, was abolished and its functions were sent to the Domestic Policy Staff. Some of the personnel were at that time disbursed to various agencies. Mr. Dogoloff, who is on my left, participated in that reorganization. He is the Associate Director now of my staff and also the head of our drug abuse function.

In addition to our fiscal 1981 budget request, we are requesting a supplemental appropriation of $122,000 for fiscal year 1980 to cover the full costs of last fall's cost of living increase for Federal employees. Without this amount, we would not be able to give our staff the cost-of-living increases that others in the Federal Government have received. If this is approved, it would bring our fiscal 1980 appropriation from $2.6 million to a total of $2.722 million. We are not requesting any additional full-time, permanent positions, nor have we since the time it has been my privilege to serve in this position.

Before answering your questions, if I may introduce those accompanying me: Bert Carp, who is the Deputy Director of the Domestic Policy Staff, to my immediate right; Mr. Lee Dogoloff, to my immediate left, is Associate Director for Drug Abuse Policy; and Mr. Bruce Holmberg is the Administrative Officer, who can answer any detailed questions if I am unable to respond.

Again, I appreciate the opportunity to appear here and I look forward to answering questions.

UNITED STATES-MEXICO BORDER PATROL

Senator DECONCINI. Mr. Eizenstat, in your assistance of Cabinet policy decisions as a vehicle for various interactions, you also often are involved in congressional requests to those Cabinet offices; is that correct?

Mr. EIZENSTAT. Yes.

Senator DECONCINI. I wish to thank you on behalf of the border

States with Mexico for your efforts with Immigration and Naturalization Service and other Cabinet officials for the assistance you have given on the border patrol problem along our border with Mexico. Indeed, without your intervention, I and other border State Senators are not sure we would have achieved what the administration wanted to achieve. As one involved in that, I thank you personally and members of your staff for taking the effort and finding the time to see that the process of Government did function.

Mr. EIZENSTAT. Thank you, Mr. Chairman. It is obvious an awful lot more work needs to be done in that area.

Senator DECONCINI. Indeed, your direct involvement did in fact get the attention of INS and the border patrol, as it has on numerous other occasions for many Members of the Senate, on both sides of the aisle, regarding development grants and what have you.

DRUG POLICY

What priority will the Domestic Policy Staff and, in fact, the President himself assign to the development and implementation of effective policies to counter the growing drug crisis in this country over the next year?

Mr. EIZENSTAT. We feel that that is, in fact, a very important issue. Mr. Dogoloff perhaps could give some additional information on this. But we have developed a strategy which is intended to do the following:

First, to interdict drugs at the source to the extent possible. Mr. Dogoloff will describe what has been done. He has done an extensive amount of traveling, and has talked to leaders in countries like Colombia and Mexico to insure that we are able to reduce the production of crops that lead to dangerous drugs.

Second, we have tried to work with the Coast Guard, Air Force and other facilities here to interdict those drugs to the extent that they are produced and come over here.

Third, we try to work with effective law enforcement officials here so that when and if, as is obviously the case, drugs do come in despite our efforts in the first two areas I have mentioned, that we have effective law enforcement which is increasingly targeted not to simply the user, but to the source. And I know that has been a particular concern of yours, Senator DeConcini.

In addition, we are also working in the drug area to insure that the health-related aspects are taken care of to a greater extent than has been the case in the past, that drug treatment facilities are improved and strengthened.

And then last, and I would say equally important, we have launched a major educational initiative with respect to the public, particularly young people. We recently developed what I think is really an excellent film—it has been shown to the Congress, to congressional wives, we are now distributing it around the country—which is looking at drugs from a young person's perspective. I think it is a very effective job of indicating why kids should not begin the use of even marihuana, let alone hard drugs. And this type of effort is being increased and expanded. So with respect to public education we are trying to expand our work there.

So each of these areas is being emphasized. Each is important. No one can be emphasized to the exclusion of the others. There are still problems, but some success has been noted.

For example, Mr. Dogoloff has reported to me over time that the heroin strength has been diluted, that the number of heroin-related deaths has declined. So that there has been some progress. But I would certainly be the last to suggest that the problem has been solved. We need an absolutely major and continuing effort, and under the auspices of the Strategy Council and Mr. Dogoloff, with the President's direction, we believe that we are continuing to push forward in those areas.

Senator DECONCINI. Before Mr. Dogoloff answers, and I would appreciate a response, let me pose a little more indepth question.

GAO REPORT ON CONTROLLING ILLEGAL DRUGS

I held some oversight hearings late last year, and Mr. Dogoloff did testify and was very informative. One of the items we discussed at considerable length was the GAO report entitled, "Gains Made in Controlling the Illegal Drugs, Yet the Drug Trade Flourishes." The report noted that after 10 years and expenditures of billions of dollars, the Federal Government has made little real progress in the fight against drugs. It also noted the single most important problem is no one in the Federal Government has a clear mandate or is exercising sufficient leadership to develop an integrated national strategy to deal with the drug problem and to insure effective implementation of such strategy.

Now I realize that we are here to consider your budget proposal. We don't have the time to go into the subject in a very complete way. But two questions.

First, what can you tell the committee the administration intends to do to provide this effective leadership against the growing drug problem, and second, has your office or Mr. Dogoloff responded to the recommendations made by the GAO report, and if so could you supply a copy of that?

Senator SCHMITT. Mr. Chairman, if you would yield. While they are thinking about that, let me add that in hearings before this subcommittee just the other day where we discussed this issue with the customs service. I think it was made abundantly clear that the interdiction in the program is a shambles. They themselves estimate that they are only interdicting about 1 percent of the volume of drugs, hard and soft, that is entering this country. That hardly seems to be worth the effort. The estimate is something like 24 million pounds of marihuana, 25,000 pounds of cocaine, and 1,050 pounds of heroin are being smuggled into the country yearly by air and marine smuggling. Those are frightening statistics. It sounds like we are not doing anything at all, plus we have no ability to use the Department of Defense capability to mount a major interdiction effort. I will add those comments to the chairman's and wait for the answer to the questions.

Senator DECONCINI. To repeat the questions. First, what can you tell the committee that the administration intends to do to provide the effective leadership against the drug problem as set out as the No. 1 recommendation and problem in the GAO report? And No. 2, has your office responded to those recommendations and can you discuss that response?

Mr. DOGOLOFF. Yes; I believe that, in fact, there is good coordination, clear policy setting that goes on at the Executive Office and is known and understood throughout the agencies and departments who have primary responsibility for the drug abuse program. That is achieved in a number of ways.

First, there is the Federal strategy which is a published document which deals with the full program, sets out very clearly our strategy for the total drug abuse program, including our international initiatives, domestic initiatives both in law enforcement and treatment.

Second, it is accomplished by a meeting I hold on a monthly basis with the principal persons who are responsible for implementing the program. That includes the Assistant Secretary of State for Narcotics Matters, the Director of the National Institute on Drug Abuse, the Administrator of the Drug Enforcement Administration, and the Commissioner of Customs, the Commandant of the Coast Guard, and the Assistant Attorney General in charge of the Criminal Division, as well as the Special Assistant to the Secretary of the Department of Health, Education, and Welfare. That is an opportunity to discuss policy issues, to bring up issues and problems and resolve them together.

In addition to that, there are a number of subgroups that function out of the umbrella of the Strategy Council dealing with specific issues which might range from crop destruction to what we are doing about methadone diversion to just a whole range of issues, some of which are even country-specific.

Relative to the concern that you have regarding the recommendations, there were specific answers to each of those recommendations which we have formulated, and I believe but I have to check, but I believe we received them from each of the agencies and did in fact respond in writing to them and forwarded them to you at the last hearing. If not, I will check and do that.

[The information follows:]

January 14, 1980

Extract of Recommendations Contained in
GAO Report Dated October 25, 1979,
"Gains Made in Controlling Illegal Drugs,
Yet the Drug Trade Flourishes"

Summary Comments

Chapter 3 - International Narcotics Control

Recommendation #1

"The Secretary of State, with the support of Congress, promote a world conference and the formation of a consortium of victim countries that would develop a plan of action to fight the global drug problem in a unified way." (Page 65)

Comment:

We agree with the suggestion that all "victim" countries act in a more unified way in addressing the international drug abuse and traffic situation. An example of our commitment to this approach is the effort we have made with the Organization for Economic Cooperation and Development (OECD) and North Atlantic Treaty Organization (NATO) to identify means of working together to target developmental assistance, such as crop substitution, to narcotics producing areas. This cooperation is also aimed at reducing the demand for drugs in developed countries. We will continue our efforts within the United Nations bodies to achieve these same goals. The General Assembly of the United Nations adopted a resolution in 1977 which directed the U.N. Secretary General to prepare a worldwide strategy to deal with the drug problem. We expect these initiatives will result in the international cooperation sought by the General Accounting Office.

Recommendation #2

"The Secretary of State requires that the Assistant Secretary for Narcotics Matters prepare realistic country narcotics action plans detailing short and long-term goals, the means of achieving these goals, and the methods for reviewing progress. Because narcotics production and trafficking often encompasses several countries, as in the Golden Triangle, the Assistant Secretary should also be instructed to prepare a similar plan on a regional basis." (Page 65)

Comment:

Although Narcotics Control Action Plans (NCAP) have been discontinued, we feel that adequate measures are being taken to ensure planning.

a. Each mission must submit a Goals, Objectives, and Resource Management (GORM) which highlights narcotics as a goal.

b. Each of the major narcotics country missions submits a Summary Narrative in its Zero Base Budget (ZBB) request which incorporates the elements of the NCAP.

c. Each mission also submits an Annual Narcotics Status Report (ANSR) which deals with the goals, accomplishments, problems, etc.

d. Each major country which enters into bilateral project agreements now uses a programming system which provides documentation on the planning: the Narcotics Assessment and Strategy Statement (NASP); the Program Working Agreement (PROW/AG); which outlines the goals, objectives, indicators of success, the implementation schedule, and budget/resources requirements.

In addition, strategy papers have been developed to present truly regional approaches. Recently, a five-year coca strategy paper, a Mexican heroin paper, an East Asia Regional strategy paper and a Near East strategy paper have been completed and illustrate the need for comprehensive planning.

Recommendations to the Congress:

"We would recommend that the Congress enact legislation which would make it illegal for any person on a U. S. vessel or on a vessel subject to the jurisdiction of the U. S. or for a U. S. citizen on board any vessel to illegally possess or transfer on the high seas a controlled substance (as defined in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 812." (Page 82)

Comment:

The House of Representatives passed such legislation, introduced by Congressman Biaggi, with Executive Office support, which closes existing loopholes regarding trafficking on the high seas. The Administration has urged adoption of similar legislation by the Senate.

Recommendation #3

(Interim actions until border control plan established, GAO Report December 1977)

a. "The Director of the Office of Management and Budget should prepare an annual analysis of law enforcement along the U.S. -- Mexican border. Such an analysis would bring together the separate budget requests of the various border enforcement agencies to facilitate integration of agencies' plans, programs, resources, allocations, and accomplishments. The analyses should be included with the agencies' appropriation requests." (Page 69)

Comment:

OMB has agreed to prepare a narrative discussion of resources devoted to the principal agencies that have border responsibilities. In addition, OMB will assist the Domestic Policy Staff in preparing a summary of Fiscal Year 1981 budget resources devoted to the control of drug abuse. This summary should be finished in February 1980.

b. "The Director of the Office of Management and Budget and the Domestic Policy Staff, together with the Attorney General, Secretary of the Treasury, and the other Department heads having responsibility for border law enforcement, should develop an integrated strategy and comprehensive operational plan for border control." (Page 70)

Comment:

The Administration has devoted a considerable amount of attention to the problems of overlapping responsibilities and the lack of cooperation and coordination between border enforcement agencies. The interagency study conducted by the previous Office of Drug Abuse Policy, and more recently the reorganization proposals developed by the President's Reorganization Project in OMB arrived at many of the same conclusions as the GAO. When the President's Reorganization Project discussed corrective measures, it was found -- as previous administrations have found -- that key members of Congress, influential labor organizations, and the public itself were not ready to accept some of the fundamental organizational changes that will be required to rationalize Federal presence on the borders.

c. "The Office of Management and Budget should coordinate closely with responsible congressional committees in developing legislation needed to accomplish the proposed plan." (Page 70)

Comment:

The Federal Government has diverse interests at the border. On the one hand, we must find ways to stem the flow of illegal aliens and contraband goods -- including drugs -- that enter the country in numbers and quantities that are increasing every year. On the other, we must find ways to facilitate legitimate travel and commerce, which means minimizing Government red tape and bureaucratic delays while maximizing revenue collection. Any one of these objectives is relatively easy to address in isolation, but in combination they are extraordinarily complex. Hence, the absence so far of "an integrated Federal strategy and comprehensive border control plan" that would satisfy the concerns of the GAO.

d. "The Secretary of State should require the U. S. Mission in Mexico to expand the NCAP to include program goals and specific objectives for supporting border interdiction efforts." (Page 70)

Comment:

Although the U. S.- Mexican border continues to be of concern, efforts have been made to improve coordination in this area. The U. S. Embassy is working closely with the Government of Mexico in developing a program to control border traffic. The Embassy's Narcotic Assistance Unit's program evaluator consults with the Attorney General of Mexico on program planning, and Mexico has agreed to use a new programming system which will identify goals, schedules, and indicators of success for each project. The U. S. Mission will include in its overall narcotics assessment and strategy proposal an objective aimed at intensifying and assisting the Mexican Government's efforts at improved border drug interdiction.

Chapter 5: Immobilizing Major Drug Violators

Recommendation #4 to Attorney General:

a. "Strengthen the prosecution of major drug traffickers through the increased commitment and continuity of attorney resources. Several alternatives for achieving this include increasing Department of Justice control over those activities of the Controlled Substances Units, establishing independent drug prosecution units similar to organized crime strike forces, or implementing uniform prosecutive priorities among the various Federal judicial districts to assure consistent commitment to high level drug prosecutions." (Page 111)

Comment:

The Major Drug Traffickers Prosecution Unit program (originally called the Controlled Substance Unit program) commenced in 1975. Under the program, 19 special narcotics prosecution units were designated in various United States Attorneys offices. The number of units has now grown to 24.

The program has attempted to meet the need for a nationwide, coordinated approach to prosecuting drug traffickers, without interfering with the necessarry discretion of the United States Attorneys in accessing and addressing law enforcement problems in their own districts. The Department of Justice is committed to the principle that the United States Attorneys must be the primary prosecutors of narcotics violators.

The Criminal Division in the Department of Justice has established a Narcotics Advisory Committee composed of senior narcotics prosecutors from around the country to advise it and the Department at large on matters pertaining to narcotics prosecutions. At a recent meeting of this committee in Los Angeles, several concrete suggestions concerning the program were raised. The Department expects shortly to develop a more realistic and successful means of communication between the field and Washington, which will provide better support and guidance for the units and better reporting to Washington. This approach comes close to two of the elements of GAO recommendation "(a)" - increasing departmental control, and implementing uniform priorities - without going so far in those directions as to impermissibly intrude upon the necessary independence of the United States Attorneys.

Major accomplishments of the MDTPU program: Units have developed expertise in various parts of the country that have made significant contributions not only to their own districts, but also to the Department at large. The Criminal Division has identified experts in various types of narcotics prosecutions located in the units, and has utilized the NARCOTICS NEWSLETTER and Division training programs to make sure that this expertise becomes part of the training base of the prosecution community at large. The Narcotics Advisory Committee noted above is composed of prosecutors with backgrounds in the units. Viewed in the light of substance rather than procedure, the MDTPU program has been a worthy investment of resources, and should continue to be of increasing importance.

b. "Direct the Administrator of the Drug Enforcement Administration to improve investigative capability against drug traffickers' financial resources by training DEA agents and hiring financial specialists to assist in investigations." (Page 112)

Comment:

Separate, week-long courses of instruction in financial investigations are currently presented by the Drug Enforcement Administration's National Training Institute. The first session was held in May, 1979, with additional sessions in August and November, 1979. Attendees at the sessions have so far included line supervisory agents, enforcement agents, and intelligence analysts from DEA; agents from the U. S. Customs Service; and attorneys from the Narcotic and Dangerous Drug Section of the Criminal Division. Lecturers have included representatives from the Criminal Division, DEA, Customs, the Internal Revenue Service, and the Securities and Exchange Commission, all of whom drew upon their expertise in some area of the complex field of financial investigations, e.g., the Bank Secrecy Act, forfeiture laws, the Tax Reform Act of 1976. Additional seminars are planned throughout 1980.

In addition, Customs has implemented a nationwide Currency Investigative Program with major units currently operating in Miami, Los Angeles, New York and Chicago. Investigations and detections of violations are closely coordinated with DEA and the FBI.

c. "Continue to monitor and improve the operation of DEA/FBI Task Forces, and seek additional means to use the FBI's expertise in investigating the financial aspects of drug trafficking and organized crime." (Page 112)

Comment:

FBI/DEA joint teams were established in New York, Chicago, and Los Angeles in 1977, and the Department continues to monitor and encourage the activities of the teams. Close and frequent liaison between various levels of the management of FBI and DEA fulfill an ongoing trouble-shooting function. This contact also permits new approaches for coordination of the mission accomplishment of the two agencies. Selected targets such as organized crime have been emphasized.

Recommendation #5

"The Secretary of the Treasury to speed the processing and dissemination of Bank Secrecy Act reports so that law enforcement agencies can achieve the maximum benefit of the information." (Page 112)

Comment:

Work is being done to improve coordination. Steps have already been taken to speed the processing and dissemination of reports filed pursuant to the Bank Secrecy Act. A Currency Investigations Division has been established within the U. S. Customs Service to process these reports. Information contained in the reports is entered into the Treasury Enforcement Communications System (TECS) computer, from which it can be easily retrieved. Investigative leads are referred to Customs field activities, to the Drug Enforcement Administration, the Federal Bureau of Investigation, and to other law enforcement agencies. As an aid to the prosecutive use of such information, the Criminal Division's Office of Legal Support Services coordinates the processing of all requests from government attorneys. Also, attorneys in the Narcotic and Dangerous Drug Section have developed expertise in the area of financial investigative techniques and the Bank Secrecy Act, with one attorney being designated liaison to the Currency Investigations Division at Customs. As a result of this expertise, and with the assistance of Customs, the Narcotic and Dangerous Drug Section prepared a guide for obtaining Bank Secrecy Act information. This guide was recently distributed to federal prosecutors and agents at the Eleventh Major Drug Traffickers Prosecution Conference held in Los Angeles, where the Bank Secrecy Act and its relationship to other innovative financial investigative techniques were discussed. Efforts are now being directed at a wider dissemination of this information among prosecutors and agents in an attempt to discover previously undetected criminal organizations, which, without the disclosure provisions of the Bank Secrecy Act, would be effectively immune from prosecution.

Matters for Consideration by the Congress

"Our review and experience lend further support to the recommendation in our previous report on the Tax Reform Act, that the Congress needs to consider whether the adverse impacts of the provisions on Federal law enforcement activities warrant revision of the IRS Code, and whether any revision can be made without disrupting the balance between criminal law enforcement and individuals' rights."

Comment:

The Justice Department's Criminal Division, the Drug Enforcement Administration, and the Treasury Department's Enforcement and Operations Branch state that because of the Tax Reform Act of 1976, Federal investigations on non-tax violations, such as those involving narcotics and organized crime, are being impeded because the statute prohibits or makes it difficult for IRS to disclose information that would be useful to law enforcement agencies.

The Congress, in enacting the Tax Reform Act, attempted to protect the legitimate privacy rights of citizens by requiring Federal investigative agencies to follow elaborate procedures to obtain taxpayer information. There is no doubt that this provision has made it more difficult for agencies such as the DEA and the Criminal Division of Justice to obtain such information from the IRS. The White House Domestic Policy Staff has instituted a process whereby the concerned agencies will submit the type of information they desire from the IRS. The Service will review this list and determine what could be disclosed under current law and what statutory changes might be necessary which would continue to protect privacy while making it less burdensome for law enforcement officials to obtain valuable information. Thereafter, a firm Administration position will be developed. It if is determined that statutory changes are necessary, they will be communicated quickly to the Congress.

Recommendation to the Congress

"We recommend that the Congress expand the capacity of the Federal court system to better immobilize drug traffickers by passing legislations to expand the magistrates jurisdictions to encompass misdemeanors." (Page 126)

Comment:

On October 10, 1979, the President signed the Federal Magistrate Act of 1979. This Act will expand the jurisdiction of U. S. Magistrate in both civil and criminal cases, and will ensure that magistrates are appointed on merit. It will also improve the capabilities and efficiency of the Federal court system, while at the same time preserving parties' rights and reducing the expense of litigation.

Chapter 7 - Mobilizing State and Local Resources

Recommendation #7 to the Attorney General:

"We recommend that the Attorney General with assistance from DEA, determine the appropriate division of responsibility between Federal, State and local drug enforcement agencies. A specific policy should be developed concerning DEA's role in cooperating with and assisting State and local drug enforcement efforts. Such a role should provide for such things as training, exchanging intelligence, and furnishing technical equipment, but should discourage Federal involvement in actions against low-level violators. The policy should take into consideration the adverse effects of financial and political realities that have always hindered cooperation among agencies." (Page 134)

Comment:

The Attorney General's policy guidance encourages more self-reliance by State and local law enforcement agencies and DEA has taken several steps to implement this policy. DEA no longer funds the salaries of participating police officers in the Task Force Program. New task forces will have a three-year life span, unless there is special justification for continuance. Existing task forces are evaluated each year and a decision made regarding continuance. DEA does not encourage Federal involvement in enforcement actions against low-level violators.

The Task Force Program represents a unique Federal/State/local partnership. Through the Task Force Program, local police officers are being trained in proven drug enforcement techniques, leaving DEA free to concentrate its efforts and resources at higher levels. The mission of the task force was to train local officers and focus on lower-level violators. However, the mission has evolved to target violators based on the geographic area where the task force is located. This change has resulted in fewer arrests, but higher quality cases directed at higher level traffickers.

Senator DECONCINI. I will check. You may have done that.

Let me ask you this: Do you dispute the GAO's strong point that no one in the Federal Government has a clear mandate or is exercising sufficient leadership to develop an integrated national strategy to deal with the drug problem and to insure effective implementation of such a strategy?

Mr. DOGOLOFF. I do dispute that. I think it does exist. It has been clearly set forth in the Executive order by the President.

Senator DECONCINI. How do you answer, then, the hearings that the State, Justice Appropriations Subcommittee has held, that just yesterday the Rules Committee held, regarding the possible creation of a Select Committee for Drug and Organized Crime, that the overwhelming testimony there is that the problem is out of control, that over the last 10 years nothing has really happened to reduce it, and that in fact there is a history of lack of coordination among Federal agencies even though there are specific successes, vis-a-vis a case in Arizona, in California, and a case in Florida?

Mr. DOGOLOFF. Let's look at it nationwide for a second. Over the past 3 years we have reduced the availability of heroin in this country about 44 percent.

Senator DECONCINI. What has the increase in cocaine been at the same time?

Senator SCHMITT. Mr. Chairman, there are indications that the heroin supplies are increasing, at least the price is going down on the street.

Mr. DOGOLOFF. There has been an 80 percent reduction in the number of people who have died from heroin overdoses in the last 3 years.

Senator Schmitt. Maybe they are just learning how to use it.

Mr. DOGOLOFF. You can make that deduction. If one of our health objectives is to reduce the number of people dying from heroin overdose, that has been accomplished substantially. If you look at the number of heroin addicts in this country, we have reduced our estimate from one-half million to 380,000 over the past 3 years.

Senator DECONCINI. Where do you get that figure, Mr. Dogoloff?

Mr. DOGOLOFF. We used that as a compilation of a number of indicators coming from both the health area, from treatment programs, from coroners' offices, from emergency room visits. It is a statistical estimate.

Senator DECONCINI. I have information that that figure is close to 500,000 people today, 486,000, and that comes from the DEA and health service agencies. It is only an estimate.

Mr. DOGOLOFF. The current estimate is 380,000, and I would be happy to supply you with the back-up information to support that.

Senator DECONCINI. How many estimated are there that have used cocaine?

Mr. DOGOLOFF. I am not familiar with that number offhand.

Senator DECONCINI. Could it be close to 10 million?

Mr. DOGOLOFF. Yes—have ever used?

Senator DECONCINI. Yes.

Mr. DOGOLOFF. I would say that might be correct.

Senator DECONCINI. How many have ever used marihuana?

Mr. DOGOLOFF. About 40 million, 15 million are currently using it.

Senator DECONCINI. I don't want my questioning to be interpreted by you or Mr. Eizenstat as any criticism of your efforts, because I have talked to you and I know you are trying. My concern is that the GAO report certainly leaves me with a strong indication that it was an objective study. It is complimented time and time again by local law enforcement testimony and even members of the Customs Office who testified in Phoenix just last week, against the wishes of the head of customs and under threat of subpena, that customs is not doing the job, that they are not coordinating with the DEA, and it is a miserable failure along the border. It is not Mr. Bensinger's or Mr. Chasen's fault per se, although this was gently laid at the doorstep of those gentlemen. But there is a lack of someone in this country, and the administration, and maybe Congress, has to act upon it to indicate that someone is going to have to act, perhaps with a heavy hand, to reorganize, if necessary, and to mandate a more coordinated effort. Then you tell us we are achieving it, and none of the facts and figures seem to convince me of that, and some members of this body.

Mr. DOGOLOFF. I think there have also been specific instances at the operating level where there has been conflict. I think there are also examples of where things are working out well. I think, No. 1, they are working out well at the Federal Government level. I think the cooperation and coordination at the Federal level among the program managers is better than it has ever been in the history of this program. I think if you look at what is happening in the Southern United States in the cooperation between Customs and DEA and the Coast Guard in our major interdiction efforts for marihuana and cocaine coming into the Southeastern United States, the cooperation is excellent.

Senator SCHMITT. Mr. Chairman, if you would yield. We had boomer falcon I and II down in that area, and they were, after much gnashing of teeth and local coordination, reasonably successful. But we can't sustain that effort. There in a short period of time there were major efforts. But if you look at it overall, the chairman is entirely right, I agree completely, there is no evidence it is working.

Mr. DOGOLOFF. I think there is evidence that there is major progress being made.

Senator SCHMITT. What is the evidence?

Mr. DOGOLOFF. The evidence has to do with the reduction in the number of heroin overdoses——

Senator SCHMITT. Those may be your statistics.

Mr. DOGOLOFF. The number of people who show up in coroners' offices dead of heroin overdose is, in fact, a statistic, but they are real, dead people.

Senator SCHMITT. But you haven't been able to tell me that has any correlation whatsoever with the amount of heroin that is entering the country or the number of addicts.

Mr. DOGOLOFF. It is absolutely correlated and directly correlated. That is why we use it as an index. We also use another index, which is price purity. Price purity is much lower than it was 3 years ago, and I can provide you with lots and lots of information that we use to monitor the situation and can assure you that all of it is down. If your issue is we are not interdicting all or even most of the illicit drugs coming into the country, you are absolutely right, and it is unlikely that we are going to be able to do that in the short term, regardless of what we do.

DRUG SMUGGLING

Senator DECONCINI. Mr. Dogoloff, we heard yesterday at the Rules Committee from a man by the name of Thatcher who is in the banana shipping business from Colombia and other ports. He has I think five vessels. He says he is inundated and overrun with briberies in the smuggling of cocaine and marihuana. We had a representative of the State Police Department from Florida testify saying it is out of hand, that the Federal Government is trying, but they are not able to get a handle on the problem down there. We had Mr. Hank Messick, who is an investigative reporter who has written a dozen books on organized crime in the Fort Lauderdale area, who testified. If you would be kind enough to review a copy of that testimony and then give me your observation I would appreciate it.

[CLERK'S NOTE.—The information follows:]

MAY 22, 1980.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Attached are written responses requested during the budget hearing chaired by Senator DeConcini on April 24, 1980.

The Senator asked for my observations on certain statements made before the Senate Rules Committee on April 23, 1980. I have reviewed the transcript. The witnesses referred to by Senator DeConcini were offering their observations regarding the effects of drug trafficking in the Southeast. The administration has been working diligently since mid-1978 to raise the level of effectiveness of law enforcement actions aimed at stopping drug trafficking into and through Southeastern United States. During this time, there has been an increase in the level of Coast Guard interdiction activities, as well as in the numbers of Federal agents of both the Drug Enforcement Administration and the U.S. Customs Service in Florida.

The enclosed summary status report describes the Southeast initiative and the actions taken during 1979, reflecting the significant increase in law enforcement activity. However, as the witnesses before the Rules Committee suggested, drug trafficking continues at an unacceptably high level. We are increasing our emphasis on financial investigations of drug trafficking as well as continuing our interdiction activities aimed at the drugs themselves. We are also working toward an effective and acceptable herbicide which, hopefully, will be of use to the Government of Columbia in eliminating marihuana in the fields where it is grown. I believe that crop eradication is an essential part of any effective program to reduce the amount of drugs being smuggled into the Southeastern United States.

Regarding Senator Schmitt's concern over use of surplus military aircraft by drug smugglers, my staff has met with representatives from the Defense Logistics Agency. An interagency group is looking into the procedures involved in disposal of surplus military aircraft. Their findings will be forwarded to Senator Schmitt within the next 2 months.

I appreciate the opportunity to appear before your committee and to furnish this additional information. If I can be of any furhter assistance, please let me know.

Sincerely,

LEE I. DOGOLOFF,
Associate Director for Drug Policy,
Domestic Policy Staff.

Your observation that things are improving in Florida, quite the contrary, Mr. Messick estimates that $140 billion in drug money a year is available and is being invested in real estate on the Gold Coast. How he comes to that figure may be questionable, but he has lived there a number of years. He says it is absolutely out of control. He says the stuff is floating up on the beach.

I am not blaming you for it, and don't mean that as a criticism. What I am trying to emphasize is we have to do something. We have got to have some leadership from the administration to address this problem. The 1973 Reorganization Act has proven to me not to have had any substantial effect, by the testimony I have heard. Nothing has come out of that that has reduced it. And if we have a slight reduction of the purity of heroin and a tenfold amount of cocaine in this country, we certainly are not succeeding.

Senator SCHMITT. Mr. Chairman, you are entirely correct. I would add one other sordid set of statistics, and I will correct them for the record. But I believe in this past year that the Department of Defense has sold 83 surplus airplanes, most of which the Customs Service working groups have identified and traced as being in the hands of smugglers of marihuana and hard drugs.

Mr. DOGOLOFF. Do you think that the Department of Defense knowingly sold those to drug smugglers?

Senator SCHMITT. No. I am suggesting there is no coordinated policy, because the Department of Defense is still selling those planes. These are the principal vehicles being used for smuggling. We at least ought to have a moratorium on these airplane sales to make it tougher to get the hardware.

Mr. DOGOLOFF. We will look into it.

Senator DECONCINI. Mr. Eizenstat, let me ask you would you be kind enough to itemize, with Mr. Dogoloff, what you think the President's thrust is going to be today forward—maybe you already have that in writing and objectives are there—and submit them to the committee within a couple of weeks or some time period? Because I am very disturbed that the administration with the many problems it has has not really addressed this, with the talent of you and Mr. Dogoloff and other people on the White House staff who realize that this thing is out of control, in my judgment—and I am only 1 of 100 here. But I would appreciate it if you would be kind enough to respond to us on what emphasis the White House and administration will put on it in view of the GAO report. Thank you for appearing.

Mr. Dogoloff, we would appreciate your frank and candid comments on the transcript of yesterday's hearing.

Mr. EIZENSTAT. Mr. Chairman, we will be glad to do that. There is no question it is a massive problem, and we are not trying to suggest that that problem has been solved by any means. We are working as forcefully and effectively as a six-person staff can do. I think Mr. Dogoloff has been clearly identified and is viewed as the center of the Government with respect to the coordination of drug abuse policy, and we will be more than happy to provide that information.

[The information follows:]

The Federal Strategy for Drug Abuse and Drug Traffic Prevention contains the policy and priorities upon which the Federal drug programs are based. The Strategy is prepared every 2 years by the Strategy Council or Drug Abuse with staff support from the Drug Policy office in the Domestic Policy staff.

The 1979 Federal Strategy presents a comprehensive and progressive program to address the Nation's drug abuse problem and sets the foundation from which the Federal Government will continue to reduce the serious effects of drug abuse in our country. The Strategy continues three major program elements to achieve our objectives: domestic treatment, rehabilitation and prevention; domestic drug law enforcement; and international narcotics control.

In the past, Federal programs have concentrated on specific drugs and almost exclusively on heroin. Although we are still very concerned with heroin as the drug presenting the most serious health hazard to our citizens, the Strategy moves away from a primary focus on specific drugs and looks more to the behavior of the individual who abuses drugs. The Strategy, therefore, supports efforts to examine the behavioral aspects of drug abuse and places a renewed emphasis on incorporating drug abuse services into the general health care system. Looking once again at the reasons why an individual turns to drugs rather than at what specific substances he or she uses will be more effective in solving the problem since the abuse of drugs generally reflects other problems which affect an individual's total life.

The Strategy also reaches out to a wider variety and larger number of people who have problems with drugs, but who are not necessarily appropriate clients for what has become the traditional drug abuse treatment program. The Strategy calls for the Federal Government to strive to assist communities in preventing drug abuse by encouraging positive alternatives for our youth.

Domestic drug law enforcement continues to focus on reducing the supply of illegal drugs; controlling the supply of legally manufactured drugs to prevent diversion into illegal channels; and increasing the level of risk for drug traffickers through investigation, prosection, and forfeiture of the traffickers' assets. To accomplish these objectives, the Strategy supports measures to strenthen our border interdiction effort to prevent the illegal entry of drugs into this country while at the same time encouraging investigations of high-level traffickers in order to disrupt or immobilize entire trafficking networks.

The Strategy particularly stresses financial investigations as a means of prosecuting those individuals responsible for the drug traffic who have so isolated themselves that they do not personally handle the drugs.

In the international program, the Strategy relies on diplomacy, cooperation with foreign government, and international organizations to encourage crop eradication and rural development programs aimed at reducing the production of illicit drugs at their sources. The Strategy also encourages increased financial commitment to the international narcotics program by other governments and supports the concept that developmental assistance must not be used in a way which fosters the growth of illicit crops.

The 1979 Strategy addresses three specific drugs which at this time present unique law enforcement and treatment problems: marihuana, PCP, and cocaine. The Federal Government continues to discourage marihuana entering this country and to support new efforts to inform parents and youth of the risks and health consequences associated with marihuana use. A similar education effort for PCP (phencyclidine) is coupled with further research and investigation of PCP precursors and analogs. The abuse of cocaine and the expanding international traffic in cocaine continue to be of great concern to the Federal Government. The Strategy calls for increased efforts to inform the American public of the health and social consequences of cocaine use as the information and the results of laboratory experiments become available. The Strategy also supports all efforts to reduce the availability of illicit cocaine.

The 1979 Federal Strategy for Drug ABuse and Drug Traffic Prevention captures the programs and initiatives which have proven to be successful in the past and which can be used as building blocks for future programs, and at the same time, proposes new ideas and new methods to more effectively deal with the drug problem. These new approaches principally look more to the behavior of the individual who turns to drugs, stress financial investigations as a means of prosecuting those individuals responsible for the drug traffic, and rely heavily on enlisting foreign cooperation in the overall drug program.

The administration supports the programs called for in the Strategy and will continue to provide active Executive Office coordination of the entire Federal drug abuse prevention effort.

COORDINATION AUTHORITY

Senator DECONCINI. One other question, Mr. Dogoloff. Do you have the direct Presidential mandate to work with the Customs Office to work with the DEA, or vice versa, or any other law enforcement agency, to work on a specific drug or general drug interdiction case?

Mr. DOGOLOFF. Yes, I do.

Senator DECONCINI. Have you ordered any law enforcement agency within the Federal Government to work with another one on a specific or a general drug interdiction case?

Mr. DOGOLOFF. I know that, for example, where there have been some problem areas I have called those to the attention of those agencies.

Senator DECONCINI. Have you issued any orders to any law enforcement agency ordering them to cooperate and work with another one on a specific or general case?

Mr. DOGOLOFF. On a specific case, no. I would not get involved on a case-by-case basis.

Senator DECONCINI. How about a general geographic case or a general case?

Mr. DOGOLOFF. Yes. And I would be happy to supply for the record the coordination on the whole Southeast initiative.

Senator DECONCINI. Have you issued orders?

Mr. DOGOLOFF. Yes. Not in the specific sense of written orders. It had to do with convening meetings. It had to do with the direction and coordination for the Southeast area, which included the Department of State, the Coast Guard, Customs and the Drug Enforcement Administration.

Senator DECONCINI. But your answer is you have not issued any specific order to any law enforcement agency mandating or directing them to work with other agencies?

Mr. DOGOLOFF. I have on the Southeast initiative. That could be interpreted as an order.

Senator DECONCINI. Is that an order, that order or what have you?

Mr. DOGOLOFF. Yes. I can give you the history on that.

Senator DECONCINI. Would you send that to us?

Mr. DOGOLOFF. Yes.

[The information follows:]

SOUTHEAST INITIATIVE

In response to high levels of drug trafficking into and through the Southeast United States, the Associate Director for Drug Policy on the Domestic Policy staff directed the formation of an interdepartmental task force to prepare and implement a comprehensive Federal response. Under the auspices of the Domestic Policy Staff, representatives from the Drug Enforcement Administration, the U. S. Customs Service, the U. S. Coast Guard and the U. S. State Department met to review the situation and to develop a coordinated effort. The coordinated effort resulted in major increases in seizures of illegal drugs and has produced longer range improvements as well. The Drug Enforcement Administration and the U. S. Customs Service have increased their presence in the Southeastern United States, training has been conducted for law enforcement offices, and the level of investigative activities has increased significantly.

A summary of the 1979 activities associated with the Southeast Initiative follows.

January 1980

FEDERAL RESPONSE TO DRUG TRAFFICKING IN THE SOUTHEAST UNITED STATES
REVIEW OF 1979 ACTIVITIES

BACKGROUND

In the summer of 1978, the Administration initiated a major law enforcement offensive against illegal drug trafficking into and through Florida and other Southeastern States. Under the auspices of the White House Domestic Policy Staff, the Drug Enforcement Administration, the U. S. Customs Service, the U. S. Coast Guard, and the State Department developed a comprehensive response aimed at stopping drug trafficking at the overseas source, interdiction of drug trafficking by sea and air, and strengthening investigative efforts. Excellent results have been achieved. For example, the United States Coast Guard seized nearly two million pounds of marihuana during the first six months of the effort compared to one-third that amount during the same period of the previous year. The number of smuggling vessels seized during the last six months of 1978 exceeded the total during the fiscal years 1973-1977.

In November of 1978, the President of Colombia initiated a major military effort to reduce drug smuggling originating in the Guajira Peninsula The military initiative was very successful in curtailing the loading and departure of drug smuggling aircraft and seagoing vessels.

1979 ACTIVITIES

During 1979 there were over 2,000 marihuana seizures in the Southeast totalling over 2.8 million pounds, compared to 1,500 seizures during 1978 which totalled 4.4 million pounds. Cocaine seizures in the Southeast increased to 1,626 pounds in 1979, compared to 745 pounds seized in 1978. While seizure statistics remain high, the decline in the amount of marihuana seized by U.S. law enforcement agencies reflects the success of Colombia's military activities and supports our goal of stopping the drugs as close to the source as possible. As of August 1979, the Colombian military reported additional seizures of 5.5 million pounds of marihuana.

The effort against smuggling by vessel into Florida appears to have produced a shift to other border areas as evidenced by increased seizures along the Gulf Coast and Atlantic seaboard. Also, extensive smuggling by private aircraft continues. A recently completed month-long joint operation conducted by the Drug Enforcement Administration and the U. S. Customs Service detected 250 to 300 suspect flights of which 27 were seized along with 713 pounds of cocaine and 1,203 pounds of methaqualone. Reduction in the availability of marihuana as reported informally in several major cities have been attributed to the cooperative effort to reduce smuggling from Colombia.

The Southeast Initiative also marks long-range improvement in drug control in this area. The Drug Enforcement Administration and U.S. Customs have increased their resources in the Southeastern United States. Training programs have been conducted for State and local law enforcement officers and for foreign drug enforcement officers. The level of drug intelligence collection and analysis has increased. Interagency investigative task forces are now focusing on major drug traffickers and their financial activities. The DEA and FBI, in joint activities, have significantly enhanced enforcement of the Federal drug and organized crime laws.

The successes achieved in the Administration's initiative against drug trafficking are the result of excellent cooperation at all levels of government. The efforts of the Government of Colombia, the diplomatic activities of the State Department, the drug interdiction and investigative activities by the Drug Enforcement Administration, the U.S. Customs Service, the U.S. Coast Guard, and other Federal agencies, as well as the assistance and support provided by State and local governments, have all contributed to the gains made thus far.

The continuing interest and support of the U.S. Congress also have contributed significantly to this initiative and to improving our border control effort overall. Legislation passed by the Congress during the last 18 months has materially strengthened the capability of law enforcement agencies in dealing with illegal drug traffickers.

The principle of stopping drugs as close to the source as possible is well established as the optimum means of reducing the availability of illegal drugs. While the impressive enforcement efforts of the Government of Colombia and the United States have intercepted large amounts of both marihuana and cocaine, the effectiveness of our efforts would be greatly enhanced by destruction of illicit crops before they are harvested. We are continuing to place a high priority on developing appropriate crop destruction technology.

Source and Transit Countries

-- The Colombian military campaign to combat the marihuana problem in the Colombian Guajira region has been active during 1979. As of the end of August 1979, the Colombian military reports the seizure of 5.5 million pounds of marihuana, 76 vessels, 85 aircraft, 294 vehicles and an assortment of weapons and miscellaneous equipment. A total of 1,481 persons were arrested including 1,278 Colombians and 203 foreigners, primarily Americans.

   Reliable field sources have indicated that the operational cost of marketing the marihuana in the Guajira region has risen substantially because of the military presence. The number of vessels engaged in transporting marihuana from the Guajira region to the U.S. by way of the Caribbean has decreased since the inception of the campaign. Aircraft bound from the U.S. to Colombia to engage in the air smuggling appear to be avoiding the zone of military activity in the Guajira region by flying to more remote areas.

The Colombian Government plans to continue the military operation. Current plans are for the National Police to join in investigative duties associated with the campaign.

-- Colombia and Venezuela have signed an anti-narcotic agreement providing for a committee to be established to develop a joint narcotic control strategy and to recommend specific action. Colombia also has signed similar agreements with Ecuador and Peru.

-- Through the efforts of the State and Justice Departments, a U.S./Colombia Extradition Treaty was signed on September 14, 1979 by Secretary of State Vance and Colombian Ambassador to the U.S., Virgilio Barco.

Discussions were concluded on September 21, 1979 between the U.S. and Colombia on a modern treaty on mutual assistance and this treaty is now under review in preparation for signature.

These treaties are designed to aid the two countries in cooperative efforts against a variety of criminal activities, including narcotics trafficking, bribery, tax evasion, and obstruction of Justice. Innovative provisions in the treaties will give both countries greater flexibility in bringing fugitives to justice.

-- The U.S. budget for International Narcotics Control for fiscal year 1980 includes $16 million authorized for Colombia for the interdiction of drug traffic. This is a major increase above the $3.9 million for fiscal year 1979. The language in the authorization bill is restrictive in that it specifies that the "funds may be used only (a) for helicopters, patrol vessels, fixed radar equipment, transport vehicles, and fuel...", and (b) "for training personnel with respect to the interdiction of drug traffic."

-- The U.S. Coast Guard organized and State Department funded a conference held in the Spring of 1979 in Washington to develop an inter-American maritime intelligence network. The purpose of the conference was to promote a cooperative reporting system capable of providing participants with current at-sea information such as position, course, speed, and description of probable/possible traffickers. Countries in attendance were Mexico, Colombia, Venezuela, Honduras, Ecuador, Haiti, Dominican Republic, Panama, Bahamas, and the United States. The reporting system became operational in the Fall of 1979.

-- Large cocaine seizures in the Bahamas during 1979 demonstrate the continued use of the islands as a transshipment point for drugs from South America to the U.S. The most recent seizure on December 8, 1979 of 436 pounds of cocaine coupled with seizures in July and August, of 340 and 446 pounds, respectively, also highlights an increased commitment from the Bahamian Government to attempt to deny the use of its territory as a transshipment point.

-- The Drug Enforcement Administration (DEA) opened the Nassau, Bahamas Resident Office on July 1, 1979. This resident office was opened in response to the recognized importance of the Bahamas and to a lesser extent the Turks and Caicos Islands as major transshipment points for cocaine and marihuana destined for the Southeastern U.S.

-- Training conducted by DEA in Colombia has been extended to judges and prosecutors who deal with narcotic cases. The training, funded by our State Department, is given in the form of a three-day seminar to discuss problems and issues involved in local and international narcotics trafficking and includes participation by attorneys from the Office of International Affairs and the Criminal Division of the Department of Justice.

-- During March 19-30, 1979, DEA conducted a State Department funded Joint Enforcement School in Jamaica in which 48 police officers participated. A Basic Enforcement School was conducted in San Juan, Puerto Rico which included participants from other Caribbean Islands, during the period of September 17-28, 1979. Two schools were conducted in Colombia during October 1979 with approximately 30 participants in each.

-- In June 1979, DEA agreed to place a Customs special agent in their Bogota, Colombia office for one year. The agent will concentrate on developing an exchange of illicit cash-flow information between the United States and foreign enforcement counterparts; develop both narcotic interdiction and related cash-flow intelligence; and educate foreign agencies and authorities concerning the potential of the Bank Secrecy Act. Previous short-term assignments had been such a success, it was felt a one year assignment would add continuity to the program.

-- To strengthen indigenous law enforcement capabilities to gather, process, and disseminate drug intelligence DEA conducted two Criminal Information Research Schools in Venezuela during the period October 22 to November 2, 1979, in which 27 Venezuela officers participated. This was followed by a similar school in Panama during November 26 to December 7, 1979, attended by 42 Panamanian officers.

-- On December 7, 1979, 27 Central and South American police officers completed a six week training program in Washington, D.C. for drug enforcement managers and supervisors.

-- The National Narcotics Intelligence Consumers Committee (NNICC) has developed the annual intelligence estimate of the trafficking routes, quantity, and value of various drugs reaching the U.S. The latest estimates are scheduled to be published in January 1980.

Southeastern United States

-- During October 1979, Operation Boomer/Falcon, a joint operation of DEA and U.S. Customs Service in the Florida/Gulf area, scored impressive interdiction results. To support the operation, five aircraft were transferred from the Southwest border to Homestead, Florida. In addition, special arrangements with the Bahamian Government allowed Customs aircraft and radar to operate from Andros Island. Navy radar at Guantanamo Bay also assisted. The following significant seizures are credited to the operation:

1. Two smuggler aircraft were interdicted by Customs aircraft resulting in the seizure of the aircraft and 671 pounds of marihuana and 532 pounds of Quaaludes.

2. Two major cocaine seizures were made. A Customs Cessna Citation interdicted a suspect aircraft resulting in the seizure of the aircraft and 329 pounds of cocaine. The Customs Cessna Citation again tracked a suspect aircraft and 384 pounds of cocaine were seized. Three smugglers were arrested.

3. A Customs jet aircraft followed a radar target from northwest of Andros Island to a gravel strip in Hendry County, Florida. A vintage DC-3 and 4,300 pounds of marihuana were seized and the crew arrested after the aircraft landed.

Operation Boomer/Falcon netted a total of 27 aircraft, three vessels, seven vehicles, seven weapons, 30 arrests, 786 pounds of cocaine, 1,203 pounds of Quaaludes, 13,440 pounds of marihuana, and 25 investigative cases.

-- The joint DEA/FBI Investigative Task Force in Miami produced its first indictment on April 30, 1979. The primary objective of this Joint Task Force Program is to identify and correlate illicitly gained monies with drug smuggling originating in Colombia, South America and to deter and immobilize violators through judicial procedures utilizing various Federal statutes. The initial indictment in April 1979 charges 14 individuals with 40 separate violations of federal law. Trial of these defendants commenced on September 17, 1979, and is expected to last several months. There are several additional Task Force cases awaiting Grand Jury action, which is anticipated in the near future.

-- The number of vessels seized by the Coast Guard in the Caribbean and proximity of Florida during 1979 is lower than during 1978. An average of six vessels have been seized per month in 1979 versus nine vessels each month for 1978. An average of five arrests were made for each seizure. The contraband interdicted during these seizures included nearly one and one half million pounds of marihuana and four million Quaalude tablets.

These reductions, as well as other evidence, suggest that the amount of marihuana smuggled into the Southeastern U.S. by vessel has declined. This can be attributed to the Coast Guard's very successful year in 1978 and the Colombian Government's anti-drug activity which not only slowed the trafficking but caused the movement of growing and loading sites away from the Guajira Peninsula. Further monitoring will be necessary to verify this trend.

-- In response to indications that smugglers might be shifting their activities westward along the Gulf Coast, Customs initiated Operation Gulf-Net. The operation included the joint efforts of the Coast Guard and DEA. The operation confirmed that smugglers have expanded their operations from Southern Florida to the Gulf Coast. Total seizures were 195,776 pounds of marihuana, ten vessels, and two aircraft.

-- Due to Coast Guard's increasing involvement in combatting illegal drug trafficking and the potential for violence when boarding vessels, the Coast Guard now requires all boarding officers to wear sidearms.

-- To bolster Customs' air interdiction efforts in the Florida/Gulf area, a Kingair Turbo-prop aircraft has been placed in service at the Miami Customs Air Patrol Unit.

-- DEA has increased the Special Agent ceiling for Florida by 10% to 136 Special Agents. This increase means that currently DEA has 10% of all domestic Special Agents assigned to the State of Florida. A majority of the increase in ceiling has been committed to the Miami District Office and the Fort Lauderdale Resident Office.

-- As previously reported, DEA opened offices in Panama City and Fort Myers, Florida in September 1978. These offices continue to occupy temporary space in the Florida Marine Patrol Office and the U.S. Attorney's Office, respectively.

-- In November 1979, Customs reassigned nine special agents to Florida bringing the total to 60 positions. Their mission is twofold. First, they will conduct criminal investigations to identify and prosecute violations of the Bank Secrecy Act. Second, they will provide new and/or more refined compliance information for more effective administration of the Bank Secrecy Act.

-- Customs has bolstered its enforcement capabilities along the Southeastern border by allocating an additional 25 patrol officers and six aircraft. The patrol officers will be used to open new stations in Florida and along the Gulf and Atlantic Coasts. A new air unit will be established in Jacksonville, Florida. An additional 16 inspectors have been allocated increasing interdiction effectiveness in cargo, passenger, and baggage processing.

-- Overall, Coast Guard units have increased their law enforcement efforts by approximately 50 percent over 1978 levels. Eighteen major cutter deployments have been made to the Florida-Caribbean Region this year by cutters from other geographical areas. Five of these deployments were made by cutters conducting annual training for Cadets.

-- Customs has developed Tactical Enforcement Selectivity Teams (TEST) to more effectively prevent the smuggling of drugs in cargo. Using newly developed profiles and other significant smuggling information, TEST units have been pinpointing high-risk shipments at Florida airports and seaports. The success of this interdiction approach was demonstrated by a 129 pound cocaine seizure at Miami International Airport. Identified as unmanifested cargo, the shipment was watched until illegally removed by two persons, one of whom was employed at the airport.

-- Nine three-day joint seminars with DEA, U.S. Customs, and Coast Guard personnel have been conducted. A total of 353 officers from Florida, Georgia, South Carolina and Alabama have been trained. In addition, DEA has conducted four three-day seminars on intelligence collection. Participating in the intelligence collection seminars were 287 State and local officers. DEA also conducted five two-week schools between January and October 1979, resulting in 371 officers receiving basic drug enforcement training.

-- Monthly meetings of the local Florida Law Enforcement Organizations (LEO's) have improved cooperation and coordination of enforcement activity between Coast Guard units and other Federal, State and local enforcement agencies.

-- Meetings have been held between DEA and IRS officials in Florida regarding drug related tax cases. These meetings have been used as a medium to continue to seek more effective use of available resources.

-- The Customs Miami Currency Investigations (C-FLO) Group continues to direct its efforts towards developing intelligence and investigating the illegal movement of currency supporting narcotics trafficking. Examples of significant cases are:

1. Inspection of an Aerocondor Airliner, departing Miami for Colombia, uncovered $152,800 hidden in the false bottom of a flight bag belonging to the flight engineer.

2. Colombian Customs seized $1,128,345 in U.S. currency from a Colombian national arriving in Bogota from Miami.

3. Based on prior information provided by DEA, an aircraft departing from Fort Lauderdale to Nassau, Bahamas was stopped by Customs and the departing passengers were advised of the currency transportation reporting requirement. After a search warrant was obtained, $50,721 in cash was found in an attache case.

4. Based on information provided by DEA, individuals arriving by air in Miami from Bimini, British West Indies were apprehended after departing the airport. Over $133,000 and seven kilos of cocaine were seized.

Legislative Actions

-- Section 511 of the Controlled Substances Act was amended to provide for the forfeiture of proceeds from drug transactions. The amendment took effect on November 10, 1978, and to date, in excess of 13 million dollars have been seized. The largest single seizure has been $3.2 million.

-- In April 1979, the Florida State Legislature enacted and the Governor signed a bill that provides mandatory sentences for possession of varying amounts of marihuana, heroin, and cocaine. The law creates the assumption that possession of large amounts of drugs is evidence of intent to traffic in them and provides for mandatory minimum sentences according to the type and amount of drugs involved.

-- Louisiana recently enacted legislation similar to Florida's mandatory sentencing law to make the State less attractive to drug smuggling organizations.

-- The Administration supports legislation which, for the first time, makes illicit trafficking in controlled substances on the high seas a violation of United States law. The House of Representatives has enacted this provision.

-- The Administration also supports legislation which makes it illegal to attempt to export or import large amounts of currency without filing the required reports; allows United States Customs officials to search for currency in the course of their presently authorized search for contraband articles; and allows for the payment of compensation to informers.

Other Actions

-- DEA, Customs, and the El Paso Intelligence Center (EPIC) have established the Narcotics Intelligence Priority (NIP) Program, which involves the free exchange of narcotics-related information between DEA and Customs in order to enhance both interdiction and investigative abilities.

-- Customs and EPIC have developed a Vessel Identification Guide. The guide assists law enforcement personnel in identifying vessels commonly used in smuggling based upon type, documentation, characteristics, and other features.

-- To date, 35 EPIC/State agreements to facilitate the sharing of drug movement intelligence have been signed. These agreements are key in the support of operational situations.

-- EPIC has prepared six special reports since January 1979 dealing totally or in part with trafficking and smuggling operations in the Southeastern part of the United States.

-- Cooperation and support from State and local officials has been excellent.

1. The Governor of Florida visited Colombia in September where he discussed the efforts against narcotics trafficking with U. S. and Colombian government officials and toured the Guajira Peninsula and the marihuana growing areas.

2. The Florida Department of Law Enforcement (FDLE) has been developing a coordinated State drug enforcement program. A DEA representative has been assigned full-time to FDLE to assist in this effort.

3. Following discussions between the Governor of Puerto Rico and White House representatives, a special task force was established, under DEA leadership, to develop a comprehensive drug law enforcement strategy for the island of Puerto Rico. Customs, the U. S. Coast Guard, and the Puerto Rico Police Department are participating with DEA in developing the strategy.

-- Destruction of large quantities of seized marihuana continues to be a problem. Based on tests conducted by DEA since January 1979, it has been determined that open pit burning is not an acceptable means for destroying bulk marihuana. Two other methods of destruction are being reviewed: an industrial incinerator and composting.

DETAILEES

Senator DECONCINI. Mr. Eizenstat, earlier this morning we talked about the amount of threefold increases in the number of detailees assigned to the White House since last summer. How many detailees are currently assigned to the Domestic Policy Staff?

Mr. EIZENSTAT. We have seven, Mr. Chairman, and they have been detailed under the procedures that Mr. Carter outlined, with reimbursement after 6 months, and they have been detailed for specific policy initiatives. For example, we have worked for some time now and have recently released a territorial policy, which I think is this Nation's first comprehensive policy with respect to its territories. We had a gentleman who was detailed for that purpose. So we try to do it on a specific project or policy.

Senator DECONCINI. You follow all the same policies and procedures that Mr. Carter outlined today?

Mr. EIZENSTAT. Yes. And just by reference to Senator Schmitt's earlier question with respect to campaigning and so forth, none of our staff engages in the campaign, the Domestic Policy Staff. These people don't themselves go as a substitute for others who would participate in the campaign. The only people who do any campaign-related activity, and those are exceptionally rare, are myself, Mr. Carp and Mr. Rubenstein. Those are extraordinarily limited.

Senator DECONCINI. I have no further questions.

Senator SCHMITT. Mr. Chairman, just to correct the record. The number of former DOD aircraft that have been identified as being in the hands of smugglers is 127. The timeframe in which they were sold I do not have available. These are principally large old aircraft with a tremendous capacity being flown by some of the older pilots who still fly those things—C-47's on up to Conveyor 580's.

Mr. EIZENSTAT. Senator, I think you have raised a very serious question. If you will permit us to check with the Defense Department and see whether it is possible to stop that.

Senator SCHMITT. The last sale was last week. I don't think the DOD is directly selling to smugglers. In fact, the evidence is they are selling to dealers who don't ask questions as to who buys the airplanes as a third party. The issue is it has been clear for some time these planes are ending up in the hands of smugglers. There really isn't any other use for the airplanes and the DOD ought to stop it. I hope the chairman will consider working with me to see if we can't do it in the appropriations process if it is not done by DOD.

LAW ENFORCEMENT BUDGET FOR FISCAL YEAR 1981

Senator DECONCINI. Mr. Eizenstat, the President's revised 1981 budget puts law enforcement expenditures at the 1980 level. This certainly indicates a substantial real cut due to the efforts to balance the budget. Do you know how that is resolved when we are, at least in my judgment, inundated with a drug problem, how that decision was arrived at?

Mr. EIZENSTAT. Yes. We ourselves only indirectly participate in the budget process to have a policy impact on it. But when the President directed that roughly $15 to $16 billion be taken out of the January budget, we consulted quite widely with the budget and appropriations leaders in the Congress, House and Senate. We tried to make those cuts as sensitively and sensibly as possible. But as the President said at the time of announcing the cuts, there is no question we simply did not only eliminate waste, we also cut into muscle in many needed areas, and this is certainly one. It is regrettable that it had to be done. The President simply felt that balancing the budget was a more important overall national goal. But unquestionably, we could use more money in this law enforcement area, and we wish we had the budget resources to provide it. I might add that that is a statement I could add in a whole range of other areas as well.

Senator DECONCINI. In the function of your office, is your advice sought on determining questions such as shall we cut development authority funds versus law enforcement funds?

Mr. EIZENSTAT. Well, in this particular instance it was not, but in the broad development of the budget we do have an opportunity for input, yes.

Senator DECONCINI. Let me just point out that these geographic area developments, such as the Southwest Border Commission and even the ones under public works, such as the Appalachian Commission, received a $14 million cutout of $380 million. These other commissions received about a 40-percent cut. Law enforcement received about a 16-percent cut. How are those decisions arrived at? Do you play any part in those recommendations?

Mr. EIZENSTAT. Not down to that type of line item. Those are done in the OMB budget process. I can say if it were a broad policy issue, it might come to my attention. At that level it would not.

Senator DECONCINI. Certainly I can appreciate a substantial cut even in the Southwest Border Commission or the Four Corners Regional Commission if it were equally applied to the Appalachian Development Act. And then when you see a very small cut there and you see a larger cut in law enforcement, I have a little problem.

In any event, thank you Mr. Eizenstat and gentlemen, for a fine presentation this morning.

Mr. EIZENSTAT. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

Fiscal Year 1980 Supplemental

Question: $122,000 has been requested for the Fiscal Year 1980 supplemental associated with increased pay costs. How much of the total requirement has been absorbed within the base?

Answer: This amount would cover the full cost of the cost-of-living increase that was put into effect last fall. Although we were able to absorb half the cost of the 1979 increase, we do not have sufficient funds to cover a portion of this year's costs.

Computer Support Services

Question: $168,000 has been requested for reimbursable computer support services to be provided by the Office of Administration. Specifically, what are the services that will be provided by the Office of Administration in this regard?

Answer: The requested computer support money will cover the cost of computer systems development that will be provided to the Domestic Policy Staff by the Office of Administration. Our request was based on the assessment of our requirements by the Office of Management and Budget and the Office of Administration. A number of ADP support systems are under consideration including an expanded correspondence tracking and management system, an issues management system for tracking and scheduling purposes, a computerized link to the major domestic agencies, and some forecasting and modelling capabilities.

Central Computer Support

Question: Has the Office of Administration provided the Domestic Policy Staff with any computer or information management services over the last year? If so, what services were provided?

Answer: The Office of Administration provided us with a limited correspondence tracking system.

Question: What were the charges and how were they financed?

Answer: The Office of Administration absorbed the total cost of the computer support given to the Domestic Policy Staff. We do not know the total cost of this service over the past year.

Question: Has the Office of Administration to your knowledge requested any funds in 1981 for the specific purpose of providing computer or information management services to the Domestic Policy Staff?

Answer: It is our understanding that beginning in FY 1981 each EOP agency will budget separately for certain ADP services that the Office of Administration will provide. OA has correspondingly reduced its budget by the amount that the other agencies have budgeted for. The amount budgeted by the individual agencies is to cover the cost of systems development. OA will continue to fund the cost of computer time to run all EOP applications. OA's FY 1981 budget request to fund EOP ADP applications is approximately $5½ million.

Furniture

Question: How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget request?

Answer: No money is included in either the 1980 or 1981 budget request for the purchase of furniture.

QUESTIONS SUBMITTED BY SENATOR SCHMITT

TRAVEL

Question 1. How much is in this request for travel? How does that compare to FY 1979 and FY 1978?

Answer: We have requested $95,000 in travel money for FY 81. This compares to $80,000 in FY 1978, and $90,000 in both FY 1979 and 1980. The $5,000 increase reflects our current projection of travel requirements over the next year and the increasing cost of transportation.

RHODESIA

Question 2. Late in 1977 your office issued a "Summary and Outline of First Year Domestic Accomplishments, and Accomplishments in National Security and Foreign Policy." In that Summary as it pertains to Africa it states:

> "We offered a plan for Rhodesian Independence. We initiated a Five Power group to negotiate toward an Independent Namibia."

In retrospect, will you admit these Summaries are nothing more or less than political puffery with tax dollars?

Answer: The foreign policy and national security sections of the President's 1977 "Summary and Outline of First Year Domestic Accomplishments, and Accomplishments in National Security and Foreign Policy" were prepared under the direction of the National Security Council staff and I asked that staff to respond to your question on Rhodesia. They sent me the following information:

> In September 1977, the U.S. and the U.K. set forth proposals for a Rhodesian settlement which became known as the Anglo-American Plan. That plan was based upon bringing the several parties together

> to work out agreement on a fair and just constitution acceptable to all, a surrender of power by the alleged regime to the U.K., an impartial administration during the election period, and finally, free and fair elections on the basis of universal adult suffrage.
>
> The Administration stood by and forcefully advocated these principles as the only viable basis for a settlement on Rhodesia. And, in the end, these principles formed the core and the substance of the Lancaster House settlement, which led directly to the return of peace and justice and stability to Rhodesia, now Zimbabwe.
>
> > With regard to Namibia, the U.S. joined with the U.K., France, Germany and Canada in 1977 to lead in an effort to effect a peaceful settlement of the Namibian problem. In July 1978, the U.N. Security Council, in Resolution 431, formally adopted the "Western Firve" proposals as the basis for a settlement. Significant progress has been made toward acceptance of this basic proposal by the Republic of South Africa, SWAPO and the other parties directly concerned. The South African Government is at the present time in communication with the U.N. concerning the proposed settlement, and most informed observers are hopeful that progress is being made.

We feel that documents such as the 1977 Summary are useful and well within the confines of official documentation.

DETAILS

Question 3: Do you have any detailees or consultants on board?

Yes, we currently have four details and two consultants working with the Staff. Two details work on health policy and two on small business policy. Both consultants work with our drug policy staff.

ELECTRONIC MAIL

Question 4: Have you developed a policy or furnished the President with any papers on the issue of electronic mail? If so, and I do not want to get into the Doctrine of Executive Privilege, could you furnish these records and documents to the Committee?

Answer: The Administration's electronic mail policy was announced on July 19, 1977. A copy of that announcement is attached.

July 19, 1979

President Carter today announced the Administration's position on the role of the U.S. Postal Service in electronic mail. The President declared his support for new services proposed by USPS, which will use long distance telecommunications systems to feed messages into the normal mailstream for delivery by postal carriers. At the same time he concluded the the USPS should be prohibited from offering end-to-end electronic services.

The services favored by the President will provide faster mail delivery while reducing costs. Mr. Carter's endorsement carries with it eight conditions which will ensure that all forms of electronic communications will be open to full and fair competition. These conditions have been accepted by Postmaster General William F. Bolger.

1. The Administration opposes any legislative or regulatory efforts to restrict competition or entry in the electronic message field. In particular, it opposes any extension of the private express statutes beyond letter mail to cover electronic transmission.

2. USPS electronic operations should not be subsidized by tax money or by revenues from other USPS services.

3. The USPS electronic service should be established as a separate entity for accounting and ratemaking purposes to ensure that it is operated in a competitive fashion and to avoid the cross-subsidization of electronic service by regular mail services.

4. The USPS should make its delivery services available to all electronic carriers at the same rates as those it charges itself.

5. The USPS electronic service will be reviewed within the next five years, before the major investment is made, to evaluate its competitive impact and its potential to improve postal services and to ensure that no cross-subsidies or other anticompetitive actions are involved.

6. The USPS should purchase electronic transmission services from carriers rather than building a transmission network.

7. To ensure that interconnection with the mail delivery system is available to all companies, technical interconnection standards should be developed through a cooperative effort by the American National Standards Institute, the USPS, the private carriers, and an impartial arbiter, if needed.

8. The existing regulatory system should be used to regulate the prices of the new services; i.e., the Federal Communications Commission should regulate the pricing of the electronic transmission portion of the electronic message service and the Postal Rate Commission should regulate the pricing of mail delivery. This regulatory system should be reexamined after five years to determine whether any statutory change is needed.

Background

Postal Service use of electronic technology may be seen as a natural evolution of the national postal system which has traditionally taken advantage of new ways of moving the mail as they have become available (stage coach, railroad, trucks, airplanes). On the other hand, it may be seen as the entry of a Government agency into the field of Electronic Message Services (EMS). Although both postal and electronic communications services are provided by the government in most of the developed world, (usually by a PTT -- Postal Telephone and Telegraph ministry) this country's electronic communications have been provided by the private sector.

One prospective use by USPS of electronic technology involves a current case before the Postal Rate Commission (PRC) and the Federal Communications Commission (FCC). Under the proposed service, Electronic Computer Originated Mail (ECOM), the Postal Service would solicit and accept electronic data stored in computer files (such as monthly billing information) transmit it electronically around the country (via contracted common carrier), generate the appropriate messages, print them on paper and automatically stuff them into envelopes for the first manual sorting at a post office near the local mail carrier for delivery. The USPS believes it can reduce substantialy the handling, labor, and transportation costs that would be associated with regular letter mail and further states that it is required to pass these savings on to the mailer. USPS expects the average price of each electronic message would eventually be 9¢ or 10¢ (1979 dollars) in the 1985-96 period, when a follow-on system called EMSS (Electronic Message Service System) would be established.

The President concluded that it was neither feasible nor desirable for the Postal Service to acquire a monopoly over electronic input and transmission of any proposed offering. Common carriers in that area are regulated under the Communications Act of 1934 by the FCC, whose policy for the past decade has been to stimulate competitive entry. The electronic message industry is increasingly competitive.

The President also concluded that as long as physical delivery through the mails exists as a primary means of communications to a large segment of the population, the USPS should take advantage of electronic communications to improve its service. However, he proposed that the USPS establish an interconnection policy to facilitate electronic message service by private companies to feed into the mail service.

Terminology

General knowledge of the terminology used to distinguished the groupings of electronic services is helpful to understand the extent and limits of the Administration's endorsement.

Generation I. USPS or electronic carriers accept messages in hard copy form which are converted to electronic impulses for electronic transmission to the destination facility where the messages are reconstructed in hard copy form for subsequent processing, sorting and physical delivery by carriers. (Example: A postal facsimile system with physical delivery by postal carriers.)

- Input - hard copy
- Output - hard copy with physical delivery by USPS

Generation II. USPS or electronic carriers accept messages in electronic form for subsequent electronic routing, processing sorting and electronic transmission to destination facility where hard copy generation of mail would take place for physical distribution and final delivery by carriers. (Examples: E-COM Generation II and EMSS services as contemplated by USPS.

- Input - electronic
- Output - hard copy with physical delivery by USPS

Note: USPS EMSS services contemplate multi-media message input, i.e., hard copy, magnetic tape, and electronic, a combination of Generations I and II.

Generation III. Electronic carrier accepts messages in electronic form for subsequent electronic routing, processing, sorting and electronic transmission to recipient's place of business or residence where a hard copy may or may not be produced. USPS has no plan to provide this service. (Example: Private firms now have such services oriented toward business, and several are testing such services for message display on the home television set.)

- Input - electronic
- Output - electronic at customer terminal

The Administration's support of USPS entry into Generations I and II is based upon a number of considerations. Among the most important are the following:

1. Productivity and Efficiency. The national interest requires a Postal Service which can serve all Americans and interface with the world's postal services efficiently and economically. The Service has progressively achieved productivity improvements by mechanization and automation in processing conventional mail. Since the creation of the USPS in 1971, its mail volume has increased 13 percent (from 87 billion pieces in 1971 to nearly 97 billion pieces in 1978) while its manpower has decreased 11 percent (from 730,000 workers to 660,000). But the future potential in these areas is closing in. A postal EMS is the logical next step to achieve further cost reduction and mail processing improvements. It allows USPS to improve efficiency and economy of mail service by continuing to use technological advances to increase productivity, speed and dependability of services.

2. Postal Tradition. EMS Generations I and II are in complete consonance with the USPS historic mission and function. They are clearly distinguishable from the Generation III end-to-end communications services which the private sector telecommunications carriers provide.

3. Universal Nationwide Coverage. USPS Generations I and II concepts adhere to the social and business practices of the mailing public in order to meet the marked needs of households, small and large businesses, rural and urban areas. The major businesses using private telecommunications carriers to interconnect their own plants and offices will need a USPS Generation II, as well as the conventional mail system, to deliver mail throughout the country.

4. International Electronic Mail. "Intelpost," is an experimental international service that is scheduled to be provided by the USPS beginning this year. USPS has agreed to arrangements with the postal administrations of several other nations: The United Kingdom, France, Federal Republic of Germany, Belgium, Netherlands, Argentina and Iran. Seven countries have already shown strong interest in participating: Canada, Mexico, Switzerland, Japan, Sweden, Australia and the Peoples Republic of China. The Administration believes it to be in the national interest to go forward with the experiment in order to determine if a genuine market need exists for the service.

The President's decision follows a six-month study coordinated by Domestic Policy Advisor Stuart Eizenstat. These agencies participated in the study: Commerce; Justice; Agriculture; State; Labor; Treasury, NASA; the Postal Service; Council of Economic Advisors; Council on Wage and Price Stability; the Office of Management and Budget; and the Domestic Policy Staff. Primary agency support came from the Commerce Department's National Telecommunications and Information Administration.

Office of Administration

STATEMENT OF RICHARD HARDEN, DIRECTOR, OFFICE OF ADMINISTRATION

ACCOMPANIED BY:
SARAH KADEC, DEPUTY DIRECTOR
URSULA PEARSON, DIRECTOR, FINANCIAL MANAGEMENT
RICHARD WHITE, BUDGET OFFICER

BUDGET REQUEST

Senator DeConcini. The committee will now receive testimony from the Office of Administration regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $12,025,000 and 151 permanent positions have been requested for fiscal year 1981 and $185,000 and no additional permanent positions have been requested for the fiscal year 1980 supplemental.

The committee is pleased to have Mr. Richard Harden, Director of the Office of Administration, with us today to present the testimony in support of these requests.

PREPARED STATEMENT

Mr. Harden, we will insert your full statement in the record at this point. The committee would be pleased if you would provide us with a brief highlight of the request.

[The statement follows:]

STATEMENT OF RICHARD M. HARDEN

I appreciate the opportunity to appear before you today to discuss the fiscal year 1981 budget request of the Office of Administration. The Office of Administration was created in 1977 under Reorganization Plan No. 1 and Executive Order 12028. The purpose of the Office of Administration is to provide common, centralized administrative support to all of the organizations in the Executive Office of the President. There are currently eleven agencies in the EOP which are served by the six divisions of OA. The range of services includes personnel management, financial management, office services and operations, information and records management, and data processing.

The 1981 budget request for the Office of Administration is for $14,116,000 in obligational authority and 151 permanent positions, or an increase of 12 positions and $2,031,000 over the level of obligations projected for 1980. The amounts I just stated are revised figures from the justification materials provided to the Committee in February. As you know, the President transmitted a revised Budget to the Congress on March 31. Included in those revisions is a $91,000 reduction in the request of the Office of Administration. We also expect a reduction of $14,000 in reimbursements from other agencies. We are also requesting a change in the way ADP is budgeted in the EOP. Currently the central EOP computer facility is funded partly by OMB and partly by OA. In 1981, we are requesting funds for this facility solely in the Office of Administration. However, we are proposing a user-funded system of chargebacks for specialized, unique ADP systems development which will be requested by the other EOP agencies in 1981. This will result in a net decrease in reimbursements in 1981 of $1,889,000. Thus, the direct appropriation request for 1981 will be $3,920,000 higher than 1980. We are also requesting a fiscal year 1980 supplemental appropriation of $185,000 to cover the cost of the October 1979 civilian pay raises.

In order to understand where we are going, one must know where we have been. When the Office was first established two years ago, the President charged us with centralizing administrative support to all agencies in the EOP and eliminating duplication of effort in the provision of services. In this regard, we have been successful. For example, there were 195 positions in OA when we started in January 1978; now there are 139 positions authorized. The same trend appears when the EOP is viewed as a whole. In 1977, prior to the establishment of OA, administrative tasks required the equivalent of 242 positions or 14% of the staff resources in the EOP, now there are 205 positions or 12% of the EOP staff required for administration. The early months were not entirely smooth, but we have refined the organization structure somewhat, and have made some staff changes to improve the quality of our services. I believe we have now reached a level of quality, timely, responsive service to all of the agencies in the EOP.

However, several of our client agencies have undertaken significant new functions in their programs and new Congressionally sponsored initiatives have arisen recently. These changes are impacting the activities of OA and are requiring additional effort on our part. For example, the Council on Wage and Price Stability is now nearly six times as large as it was a year ago. The Office of Management and Budget is making greater use of automation in preparing the Budget for transmission to the Congress, and is developing a new Federal Information Locator System to reference sources of information throughout the entire government. Also, the Office of Personnel Management has initiated two new programs which affect us. The first is a governmentwide Federal Equal Opportunity Recruitment Program which will require much more extensive outreach in minority and female hiring. The other delegates to agencies the responsibility for conducting their own competitive examination and registration of candidates at the mid and senior levels. Some of these programs are of special interest to the Congress. As a result, we now must request additional resources in order to maintain an acceptable level of service to the agencies we support. Our budget justification statement identifies twelve specific positions which, if approved, will permit us to meet some of the most pressing new requirements for our support. Most of these demands are being made now, and the need will be even more critical by 1981. The justification materials provide details of these additional resources which are requested for fiscal year 1981.

The increased resources which we are requesting for 1981 are required to support changes in the EOP community which have been approved since we last appeared before the Committee. However there are also new or expanded agencies in the EOP which had not yet been proposed when our budgetary requirements for 1981 were developed. For example, the United States Trade Representatives is just now being reorganized and expanded to nearly triple its previous size, including an office in Geneva, Switzerland. Also, the President has proposed a major new program for the Council on Wage and Price Stability, and legislation is nearing completion on establishment of the Energy Mobilization Board, which could be one of the larger agencies in the EOP. We have not yet requested resources to support these proposed changes, as the level of support necessary is still tentative at this time. We will advise the Committee of any further increases in OA resources which may be required, if these or other changes occur in the EOP.

In the area of ADP equipment, we are reviewing our options regarding the replacement of our current hardware, as the delegation of procurement authority from GSA for that particular installation expires later this year. As part of our planned upgrading to support the greatly increased ADP usage by the EOP agencies, we have leased under competitive procurement a Honeywell computer that has among its many capabilities, a suitability for office automation applications. We will use a portion of this machine for the development and testing of prototype office automation systems on a reduced configuration for support of some EOP agencies to determine the feasibility of the technology and assure its cost effective operation before full implementation.

In conclusion, the Office of Administration budget request before you is, I believe, the minimum necessary to maintain a proper level of service to the Executive Office of the President in fiscal year 1981. I will be happy to answer any questions you might have.

OPENING REMARKS

Senator DECONCINI. Mr. Harden, please introduce your colleagues.

Mr. HARDEN. Thank you, Mr. Chairman.

I would like to introduce the members of my staff who are with me today. On my right, Mrs. Sarah Kadec, the Deputy Director of the Office, and Mrs. Ursula Pearson, the Director of the Financial Management Division. On my left is Mr. Richard White, the Budget Officer.

The 1981 budget request of the Office of Administration is for $14,116,000 in total obligations, which will be offset by $2,091,000 in reimbursements from other agencies for ADP systems development. Thus, the appropriation request is $12,025,000.

As you know, the Office of Administration was established in 1977 to consolidate administrative services throughout the Executive Office of the President. We provide the full range of common administrative support and services to all 11 agencies of the EOP.

In the 2 years that we have been in existence, we have worked hard to streamline our organization and improve the quality and responsiveness of our services and support. In 1979 I feel we reached the minimal level of resources necessary to provide satisfactory support to the EOP agencies. However, in 1980 several agencies have undertaken expanded areas of responsibility which strained our resources, and we must now request additional resources to meet these new demands.

I might add that in regard to the new agencies that are under consideration, we have not requested any resources at this time.

I would like to focus on a concern that came up last year regarding data processing in the EOP. We have developed a chart that will explain what occurred in fiscal year 1980 and what is anticipated in fiscal year 1981. In the development area, last year we had approximately $1.4 million, all of which was in the budget of the Office of Administration. In 1981, the funding has been shifted to the agencies, with a small amount remaining in OA for internal development. The major portion of the funding for facilities in fiscal year 1980 was in the OMB budget, with a smaller amount in our budget. For fiscal year 1981 the total amount is solely in our budget. There is a total increase of about $1 million. This is to provide for, among other things, the implementation of OMB Bulletin 79–10, which provides for electronic transfers of budgets from the departments and also for the Federal information locator system, which was recently mandated by Congress.

In conclusion, Mr. Chairman, the budget request you have before you will sustain the activities of the Office of Administration in 1981. With your assistance and guidance, we can continue the tradition of fine service to all agencies in the Executive Office of the President.

I would be happy to answer any questions you or the committee may have.

Senator DECONCINI. Mr. Harden, I have a number of questions I will submit to you for the record. I do have one I will ask you now.

CENTRAL COMPUTER FUNDING

Is it the policy of the Office of Administration to fund in its budget the hardware and operational computer costs necessary to support the other Executive Office agencies and to permit the other agencies to fund within their budget any systems development work?

Mr. HARDEN. Yes, that is the approach we are taking. As you can see, the total facilities funds are included in our budget, while the development funds are in the individual agencies. I might add we are in the process of installing a cost accounting system in the computer system so we can better determine how the resources are being used in future years.

Senator DECONCINI. If that is the case, why then is there an increase of $434,000 requested which is primarily associated with the cost of additional ADP systems development work to be performed by the contractors? Let me add this. Under the policy expressed, if I am correct that you said yes to the first question, shouldn't this additional cost be budgeted for in the user agency that benefits?

Mr. HARDEN. I think part of the problem is that the way ADP is financed has changed two times since we were created. Because of these changes, what is being reimbursed this year does not match up exactly with what we will be reimbursed for next year. We can submit something for the record that will explain that line item in detail.

[The information follows:]

ADP FUNDING

[In thousands of dollars]

	1980	1981
Development:		
Office of Administration	1,475	232
Office of Management and Budget		1,460
White House Office		200
Domestic Policy Staff		154
U.S. Trade Representative		30
Council of Economic Advisers		15
Total	1,475	2,091
Facilities:		
Office of Administration	592	[1] 5,521
Office of Management and Budget	3,980	
Total	4,572	5,521

[1] 1981 amount includes 4,820 previously financed from OMB.

Senator DECONCINI. First, let me ask you to give a precise answer to the policy and then answer the question as to the $434,000. You can submit that.

Mr. HARDEN. OK.

[The information follows:]

SYSTEMS DEVELOPMENT FUNDING

Due to the changes in our reimbursable program from 1980 to 1981, we felt the best style of presentation was one which shows a consolidation of both reimbursed and appropriated funds. This way you can see where our overall activities are changing, regardless of the source of funding. The particular increase you mentioned, contractual ADP systems development work, will be funded out of payments from the user agencies. It is part of our overall program, but is not in the directly appropriated portion of our budget request. The other agencies have included the respective amounts in each of their appropriation requests.

Senator DECONCINI. Thank you. The other questions we will submit to you and you can answer them for the record. Thank you very much.

Mr. HARDEN. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

CHANGES PROPOSED IN FINANCING SUPPORT SERVICES TO OMB

Question: In fiscal year 1981 the Office of Administration proposes to fund $3,980,000 of OMB's computer operations within its own budget. This represents OMB's share of hardware and operational ADP costs and was last year included in OMB's budget. This year OMB is including $1,460,000 in its fiscal year 1981 budget for systems development work. Last year these funds had been included in the Office of Administration. In other words, the Office of Administration and OMB are making an exchange with this year OMB funding its computer development work while OA is funding the OMB cost of operating the computer system with regard to operational hardware costs. The exchange represents an increase of $2.5 million for the Office of Administration.

Why then is OA only showing $1,889,000 as an increase associated with changes in reimbursements for ADP operations?

ANSWER: The Office of Administration is also expecting reimbursements from other Executive Office of the President agencies such as the White House Office, the Domestic Policy staff, the Office of US Trade Representative, and the Council of Economic Advisors for systems development work in 1981. The reimbursements for all the agencies requiring systems development work is expected to total $2,091,000, or a decrease of $1,889,000 from the $3,980,000 which will be received from OMB in 1980 for hardware operational costs.

INFORMATION MANAGEMENT AND COMPUTER SUPPORT SERVICES

Question: OA has requested $1,206,000 for information management activities in fiscal year 1981 and $5,581,000 for information systems facilities in fiscal year 1981. For each of these two categories of expense how much is related to services for each of the various executive office agencies?

Please list and describe the services for each executive office agency.

Answer: The amount for each of the Executive Office agencies is shown in the table below:

Agency	$000 Library and Records Mgt.	$000 Comp Fac.
Council of Economic Advisors	76	10
Council on Environ. Quality	33	--
Council on Wage and Price Stab.	96	38
Domestic Policy Staff	19	48
National Security Council	8	--
Office of Administration	273	490
Office of Management & Budget	511	4,820
Office of Science & Tech.Policy	8	--
US Trade Representative	74	15
Office of the Vice President	7	--
White House Office	29	100
Other (Government)	58	--
Other (Public)	14	--
	1,206	5,521

The information management services provided to the Executive Office agencies include library and records management services which are not differentiated among the separate agencies.

The list of computer applications shown below is representative of the systems which the agencies of the Executive Office of the President operate on the Office of Administration computer facility.

Office of Management and Budget

- Budget Preparation System
- Budget Status System
- Catalog for Domestic Assistance
- Clearance Office Information System
- Correspondence Tracking System
- Federal Assistance Program Retrieval
- GAO Reports Tracking
- Privacy Act Inventory Control System
- Projects Tracking

White House Office

- Consumer Affairs Tracking
- Speaker Scheduling
- Press Release Index
- Press Office Log

Office of the Vice President

- Project Tracking
- Time Analysis

Office of Administration

- Document Preparation
- Employment Application System

Office of Administration (Continued)

- Project Tracking System
- Library Circulation

Office of U.S. Trade Representative

- Sector Assessment Review System
- Foreign Tariff Offer System

COMPUTER SYSTEMS DEVELOPMENT WORK

Question: The fiscal year 1981 budget for the Office of Administration includes $2,091,000 in reimbursements from the other Executive Office agencies for specialized computer systems development work. $1,450,000 of this is expected to come from the Office of Management and Budget. Is that correct?

How much will come from each of the other agencies in the Executive Office? Specifically, which other agencies will be funding how much of this work?

Answer: The agencies that will fund the systems development work are as follows:

Office of Management and Budget	$1,460,000
Office of Administration	232,000
White House Office	200,000
Domestic Policy Staff	154,000
US Trade Representative	30,000
Council of Economic Advisers	15,000
Total:	$2,091,000

FISCAL YEAR 1980 SUPPLEMENTAL

Question: $185,000 is requested for the Office of Administration for pay raise supplementals in fiscal year 1980. How much of the total requirement has been absorbed?

Answer: The requested amount is 40% less than the full year amount contained in the 1981 budget request.

ADDITIONAL FUNDS REQUESTED FOR TRAVEL

Question: An additional $18,000 is requested for travel. The justification material indicates this increase is necessary in order to permit an active recruitment of minorities and women. In view of the high unemployment rate in Washington, D.C. why is it necessary to travel about the country in order to recruit minorities and women?

Answer: The Federal Equal Opportunity Recruitment Program is designed to correct under-representation of minorities and women at all levels of the organization. Under this program, we are required to compare the existing composition of specific job categories with a national norm. If we find that one or another minority group is under-represented in a particular job category, we are required to correct that imbalance through active recruitment. In the local area, the minority unemployed are largely unskilled or semi-skilled persons, many of whom are young and entering the job market for the first time. We already have a high concentration of minority employment in the lower levels of our organization. For example, while half of our total employment is graded GS-7 or lower, three fourths of our black employees and all of our oriental employees are graded GS-7 or lower. The under-representation exists at the higher levels. We do not have enough minorities and women at the professional and managerial levels. In order to find minorities and women who are qualified at those levels, we are going to have to extend our efforts beyond the local community. Also, this program must address the imbalances of other specific minority groups which are not well represented in the local area. In order to recruit minorities, such as Hispanics, Orientals, or American Indians, we must travel to other areas of the country where they are located.

Question: How much of the requested increase for travel is associated with travel to participate in training and seminars with regard to information management activities?

Answer: We are requesting $8,000 to increase our participation in training and seminars in the area of computer systems analysis. This increase is necessary to stay abreast of the rapidly growing changes in technology in this area. We have not been budgeting for this in the past, and in fact, many of our computer specialists have not taken any training courses for five years or more. We can not continue to limit the development of our employees' professional capabilities without also limiting our ability to effectively utilize recent technologic changes.

FURNITURE

Question: How much is included in the 1981 budget proposal for the purchase of furniture?

How much is in the 1980 budget request?

Answer: Our 1981 budget request contains approximately $20,000 for furniture that will be used by the 12 new employees that are requested in 1981. We do not have any excess furniture of our own that is available for this purpose. Thus, we must purchase the desks and chairs from other agencies' excess stock or through normal procurement channels. We will make every attempt to obtain some of the furniture through inter-agency transfers from agencies or departments who have some extra furniture in their warehouses, but we are not optimistic that it would be donated to us free of charge.

In 1980, we have spent approximately $5,000 for replacement furnishings, which should suffice for our immediate needs. We do not plan to spend anymore this year for furniture.

QUESTIONS SUBMITTED BY SENATOR SCHMITT

Question: How many people are in your office?

Answer: The Office of Administration has an employment ceiling of 139 full-time permanent positions and 10 other than permanent positions.

Question: How many people are in the White House Office?

Answer: The published 1981 Budget Appendix indicates that the White House Office is authorized 351 positions.

Question: What I am getting at is the size of the President's staff?

Answer: The President's staff consists of the people in the White House Office. The Office of Administration does not provide any staff support directly to the President. The responsibility of the Office of Administration, as specified in Executive Order 12028, is to provide common centralized administrative services to all of the agencies of the Executive Office of the President.

Question: How many detailees?

Answer: There are currently 26 detailees assigned to the Office of Administration.

Question: How much for travel?

Answer: The consolidated 1981 budget request for the Office of Administration contains $51,000 for travel.

Question: Have you had any money transferred to your account from other accounts?

Answer: Yes, the Office of Management and Budget is expected to reimburse the Office of Administration $3.98 million for its share of the operational costs of the EOP computer facility in 1980.

Question: How many permanent positions do you have?

Answer: The Office of Administration now has 139 permanent positions.

Question: What is the average GS grade and salary of your office?

Answer: The average GS grade is 8.67 and the average GS salary is $21,813.

Question: Does your office send out or subsidize a White House newsletter? (If so, who writes it, who receives it, and what does it cost?)

Answer: The Office of Administration does not subsidize any White House newsletters. The Office of Administation, as one of its responsibilities to provide common, centralized administrative services, performs printing services for all agencies of the Executive Office of the President, including the White House Office.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

STATEMENT OF MANUS J. FISH, JR., REGIONAL DIRECTOR, NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION

ACCOMPANIED BY:

ELMER S. ATKINS, ASSOCIATE REGIONAL DIRECTOR, WHITE HOUSE LIAISON, NATIONAL PARK SERVICE

MICHAEL T. MELTON, ADMINISTRATIVE OFFICER, WHITE HOUSE LIAISON, NATIONAL PARK SERVICE

SUMMARY STATEMENT

Senator DECONCINI. The committee will now receive testimony from the Executive Residence at the White House regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $3,156,000 and 86 permanent positions have been requested for fiscal year 1981 and $153,000 and no additional permanent positions have been requested for the fiscal year 1980 supplemental.

The committee is pleased to have Mr. Manus J. Fish, Jr., Regional Director, National Park Service, with us today to present the testimony in support of these requests.

Mr. Fish, the committee would be pleased if you would provide us with a brief highlight of the request.

Mr. Fish, please introduce your colleagues.

Mr. FISH. Thank you, Mr. Chairman.

On your left is Mr. Elmer Atkins, Associate Regional Director, and on your right is Mr. Michael Melton, the Administrative Officer.

Mr. Chairman and members of the committee, I appreciate the opportunity to present the 1981 budget request and 1980 supplemental request for the Executive Residence at the White House. The request for fiscal year 1981 is $3,156,000 and 86 permanent positions. We are also requesting a supplemental for the current fiscal year of $153,000 and no additional positions.

The 1981 budget request includes a decrease of $100,000 for painting the residence, which only occurs every 4 years.

The following increases are requested: $83,000 to cover the cost of pay increases comparable to classified employees. $63,000 is requested for the following increased costs: utilities, $23,000; equipment, $7,000; supplies and materials, $33,000.

The amount of $85,000 is requested to provide for increased costs in personnel services: premium pay, $21,000; official events, $8,000; within-grade advancements and merit increases, $25,000; and $31,000 for staffing adjustments.

As part of the President's program to balance the 1981 budget, we reduced our budget request by $48,000. This will be achieved by reducing the planned official entertainment of the President. No additional positions are requested for the normal operation of the residence.

Mr. Chairman, I would be pleased to answer any questions you may have.

Senator DECONCINI. Thank you, Mr. Fish. I have a few questions we will submit to you and you may answer for the record.

QUESTIONS BY SENATOR DECONCINI

It has been brought to my attention you had a turkey problem at the White House. Can you give us any update who caused that and has it been apprehended?

Mr. FISH. No, sir, it has not been apprehended. The turkey has moved from the North Grounds to the South Grounds and we are kind of waiting until the turkey gets adjusted to the environment and then perhaps we will be able to coax the turkey to leave.

Senator DECONCINI. Do you know where the turkey came from?

Mr. FISH. No, sir. There are many stories, but we suspect it may be one of the turkeys that nests within the beltway area, and it just flew in.

Senator DECONCINI. Thank you. The White House doesn't serve bourbon so it can't have anything to do with that. There was a thought that may have been it.

Mr. FISH. No, sir, it does not serve bourbon.

Senator DECONCINI. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

SALARY ENRICHMENT

In addition to amounts requested for pay increases for employees, within grade advancements, premium pay increases, $31,000 has been requested for staffing adjustment. Please describe what is meant by staffing adjustments.

In 1978 the Executive Residence underwent an organization and operations review by the White House Office. There were five major objectives for this project:

1. To determine whether residence operations fulfilled the requirements of the First Family and their official and public activities.
2. To identify those functons which must be performed to assure responsive operations and those functions currently performed that may be unnecessary.
3. To develop cost-effective and efficient approaches for performing those functions that are essential.
4. To design and implement improved management practices.
5. To design and implement new clerical and work procedures that will support the revised management practices.

The final product of this effort was to improve management practices which would contribute to more effective resourse planning, delivery of services, and sustained opportunity for management effectiveness.

To meet these higher priority requirements that were identified in this management study, it was determind that as positions become vacant, they would be reallocated to meet higher priority requirements to improve the management and operation of the Executive Residence. It is estimated that an additional cost for such replacements will be $31,000 in Fiscal Year 1981.

SPECIAL PERSONAL SERVICES

A $9,000 increase has been requested for special personal services. Please describe what type of services are included in the categories of Special Personal Services.

In keeping with the President's plan to balance the 1981 budget, $48,000 was taken out the the budget proposal, and therefore, the $9,000 increase for special personal services is no longer required.

EFFECTIVENESS OF THE SOLAR SYSTEM

Last year the new solar system added to the roof of the White House Building was given some publicity in the newspapers. Is the unit now in full operation?

What is the estimated contribution it has made to reducing electrical expense at the White House?

The last component of the West Wing solar system, a BTU meter, was installed in March 1980, and the unit is now in full operation.

The reasons for installation of a solar water system on the West Wing of the White House, are to achieve a highly visable demonstration of the practical feasibility of solar energy, and the administration of compatible solar and other alternative energy sourses. The initial projection indicated that the system can reduce energy cost by $1,000 per year. Data regarding the system is being analyzed by the General Services Administration and the Department of Energy to test the validity of this projection. It is projected that the savings can rise significanty in the future depending of future energy costs.

GENERAL CONDITION OF THE WHITE HOUSE

What is the general condition of the White House?

What are the next major repair and renovation projects that are needed to be undertaken at the White House?

According to a structural survey presently being prepared, the steel structure of the White House is in good condition. The last major renovation occurred in 1948 and 1952, and the White House now requires more frequent inspections, which is accomplished by the National Oceanic Survey, the National Bureau of Standards, and engineers and architects from the National Park Service.

In 1979, the National Park Service started the renovation of the White House utility systems. This is a project to modernize the complex electrcial, mechanical and other utility systems serving this foremost historic structure. The work will be sequenced to cause minimum disruption to the First Family, White House staff, and visitors.

To provide for the safety and adequacy of primary and secondary electrical distribution systems throughout the residence, the National Park Service began last October, replacement of the deteriorating wiring, panel boards, circuit breakers, and other equipment on all seven floors of the Residence.

In order to provide sufficient electrical power for the increase communications and equipment and to provide emergency back up power, the primary elecitrical system is being renovated and new engine-generators are being planned.

FURNITURE

How much is included in the 1981 budget proposal for the purchase of furniture?

How much is in the 1980 budget request?

The Executive Residence has a budget request of $67,000 to acquire the following furnishings in Fiscal Year 1981:

New Draperies for the Blue Room	$10,000
New Draperies for the Green Room	10,000
New Draperies for the East Sitting Hall	6,000
New Draperies for the West Sitting Hall	6,000
New Wood Floor for the Map Room	12,000
New Wood Floor for the Diplomatic Reception Room	12,000
Replace Blue Room Wallpaper (labor only)	3,000
Vermeil Powder Room Renovation	8,000

The Executive Residence has bugeted $54,000 to acquire the following furnishings in Fiscal Year 1980:

Draperies, First floor Family Dining Room	$10,000
Draperies and bed hanging First Family Bedroom	12,000
Draperies, Blue Room (labor only)	10,000
Carpet West Sitting Hall (if possible)	7,000
Renovate Vermeil Powder Room (new fixtures, etc.)	8,000
New wood floor for China Room	11,000
Under curtains for State and Ground Floors	3,000
Draperies Green Room (if possible)	10,000

Official Residence of the Vice President

STATEMENT OF CAPT. FREDERICK N. MANGOL, USN, ASSISTANT DIRECTOR OF BUDGET AND REPORTS, OFFICE OF THE NAVY COMPTROLLER

ACCOMPANIED BY WILLIAM C. COONCE, SERVICE-WIDE SUPPORT ANALYST

BUDGET REQUEST

Senator DeConcini. The committee will now receive testimony from the Department of the Navy regarding the fiscal year 1981 budget request for the official residence of the Vice President. $168,000 has been requested for fiscal year 1981.

The committee is pleased to have Capt. Frederick Mangol with us today to present the testimony in support of this request.

PREPARED STATEMENT

Captain Mangol, your full statement, if you have one, will be put in the record. The committee would be pleased if you would provide us with a brief highlight of the request.

[The statement follows:]

Statement of Capt. Frederick N. Mangol

I welcome the opportunity to once again present the Department of the Navy's fiscal year 1981 budget request for the appropriation, Official Residence of the Vice President.

The fiscal year 1980 request is $168,000. This is $65,000 less than the $233,000 that was appropriated for this function in fiscal year 1980. The incremental change of resources between fiscal year 1981 and fiscal year 1980 is composed of (1) a decrease of $100,000 associated with the installation of a new rook; (2) an increase of $4,000 for price growth in utilities and other services; and (3) $31,000 for a cyclical—4 year—refurbishment in accordance with standard Navy practice to thoroughly clean and repair quarters on a regularly scheduled basis.

The funding requirements by function are furnished in Table 1:

Table 1.—*Functional areas*

[In thousands of dollars]

	Fiscal years—		
	1979 actual	1980 estimate	1981 estimate
Utilities	15.0	16.0	18.0
Maintenance of residence	24.5	25.5	27.3
Alterations and improvements	3.0	3.5	3.5
Supplies	4.0	4.6	4.6
Furnishings	8.6	8.9	9.0
Vehicle lease	2.0	2.0	2.0
General administration	4.2	4.4	4.5
Services	4.4	4.6	4.6

TABLE 1.—*Functional areas*—Continued

[In thousands of dollars]

	Fiscal years—		
	1979 actual	1980 estimate	1981 estimate
Equipment maintenance	3.3	3.5	3.5
Official entertainment	60.0	60.0	60.0
Major repair		100.0	
Cyclical refurbishment			31.0
Total	129.0	233.0	168.0

DEPARTMENT OF THE NAVY—OFFICIAL RESIDENCE OF THE VICE PRESIDENT

	Positions	Dollars in thousands
1980 approved to date	0	233
1981 request	0	168
Difference	0	−65
Percent difference	0	−28

INCREASES REQUESTED IN 1981

	Positions	Dollars in thousands
Cyclical refurbishment	0	31
Inflation	0	4
Total increase requested	0	35

FISCAL YEAR 1980 SUPPLEMENTAL

	Positions	Dollars in thousands
Total increase requested	0	0

BIOGRAPHY OF FREDERICK N. MANGOL

Capt. Frederick N. Mangol, U.S. Navy, currently serves as Assistant Director of Budget and Reports, Office of the Navy Comptroller. Prior to assuming these duties, he served as the Special Assistant for Financial Management to the Director of Navy Program Planning, and as the Sea Control Analyst to the Director General Planning and Programing on the staff of the Chief of Naval Operations. Captain Mangol has commanded the U.S.S. *Brumby* FF–1044 while deployed in Africa and the Indian Ocean, and he was the commissioning Captain of U.S.S. *St. Francis River* LSMR–525, a rocket firing shore bombardment ship which saw extensive duty on the gunline in Vietnam waters. He has also served in operations and weapons billets in U.S.S. *Parsons* DD–949, U.S.S. *Cavalier* APA–37, U.S.S. *Bayfield* APA–33, and as the Combatant-Amphibious Plans Officer on the staff of Commander 7th Fleet during the Vietnam War.

Captain Mangol was graduated from Michigan State University in 1957, and has received advance degrees from George Washington University in 1970 and the Harvard Business School in 1973. He has also completed both junior and senior courses at the

Naval War College, and has served on the faculty and as a special assistant to the President of the war college. He has also served as a special assistant and acting Executive Secretary to the Board of Selectmen in Sudbury, Mass. during the summer of 1972.

Captain Mangol has been awarded the Bronze Star Medal (V), the Navy Commendation Medal (V) with two Gold Stars, the Vietnamese Distinguished Service Order and the Vietnamese Gallantry Cross with two Silver Stars. He also has the Combat Action Medal, the Navy Unit Commendation Ribbon with two Bronze Stars, the Navy Meritorious Unit Commendation with one Bronze Star, the American Defense Service Medal, the Armed Forces Expeditionary Medal, and the Vietnam Service Medal with one Silver and four Bronze Stars.

Captain Mangol is the son of Mrs. Adam Mangol of Livonia, Mich., and is married to the former Pauline Hardy of Fall River, Mass. Captain and Mrs. Mangol and their children, Lisa and Eric, live in Springfield, Va.

SUMMARY OF STATEMENT

Captain MANGOL. Good morning, Mr. Chairman.

Senator DECONCINI. Please introduce your colleague.

Captain MANGOL. I am accompanied by Mr. William Coonce, who is the Service Support Analyst in the Office of Budget and Reports.

Mr. Chairman, this year's appropriation request for the Vice President's residence is very similar to last year's. The key elements are there are $77,000 for operation and maintenance of the quarters, which is $4,000 more than last year. This is an increase of 3 percent. There is also $31,000 for a cyclical 4-year refurbishment of the quarters in accordance with standard Navy practice to thoroughly clean and repair quarters on a regular basis. Last, there is $60,000 for official entertainment, or $5,000 per month. This figure has not changed in the last 5 years.

I am prepared to answer any questions you may have.

MAINTENANCE OF RESIDENCE

Senator DECONCINI. Captain, this request is only for the particular Vice President's residence, not the other buildings on the grounds there?

Captain MANGOL. That is correct, sir.

Senator DECONCINI. What is expended, or do you know, on the other maintenance and upkeep of other buildings on those grounds?

Captain MANGOL. Are you referring to the rest of the Naval Observatory?

Senator DECONCINI. Yes, sir.

Captain MANGOL. I am sorry, I don't have those figures with me.

Senator DECONCINI. I have no further questions. I will give you a couple here you can respond to for the record.

Captain MANGOL. Thank you.

Senator DECONCINI. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

REQUEST OF $31,000 FOR "CYCLICAL REFURBISHMENT"

Question. Included in the request for 1981 is a $31,000 increase for what is referred to as a cyclical refurbishment in accordance with standard Navy practice to thoroughly clean and repair quarters. Please describe the need for this project. Doesn't normal maintenance and cleaning activities maintain the quarters in adequate fashion? Are there major repair items that will be addressed? If so, what are they?

Answer. The cyclical refurbishment of the Official Residence of the Vice President is accomplished every 4 years. It is required to prevent deterioration and additional maintenance cost at a later date, and provides services not included in the annual maintenance and cleaning activity. This project covers exterior and interior painting, thorough cleaning or replacement of carpets, drapes, and upholstered furniture, and check and repair of all mechanical equipment. Also planned are considerable interior wall and ceiling repairs to fix damage caused by the leaky roof.

FURNITURE

Question. How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 request?

Answer. The funds requested for furnishings in fiscal year 1980 and fiscal year 1981 provide for essential repair and spot cleaning of furniture, carpets, and draperies.

SPECIAL ASSISTANCE TO THE PRESIDENT

STATEMENT OF SARAH T. KADEC, DEPUTY DIRECTOR, OFFICE OF ADMINISTRATION

BUDGET REQUEST

Senator DECONCINI. The committee will now receive testimony on Special Assistance to the President regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $1,531,000 and 27 permanent positions have been requested for fiscal year 1981 and $66,000 has been requested for the 1980 supplemental.

The committee is pleased to have Mrs. Sarah Kadec, Deputy Director of the Office of Administration, with us today to present the testimony in support of these requests.

PREPARED STATEMENT

Mrs. Kadec, your full statement, if you have one, will be put in the record. You may highlight it for us.

[The statement follows:]

STATEMENT OF SARAH T. KADEC

The 1981 appropriation request of $1,531,000 is for expenses necessary to enable the Vice President to provide assistance to the President. The assistance takes the form of directed and special Presidentially assigned functions. The Vice President, through Cabinet membership and White House contact is informed on a continuing basis regarding Presidential responsibilities.

Among the Vice President's specifically directed functions are the following:

Member of the President's Cabinet, acting as Chairman when the President is absent;

Vice Chairman of the National Security Council;

Member of the Board of Regents of the Smithsonian Institution.

In addition, he is an advisor to the President in matters of national importance, and he assists in ceremonial functions and in the conduct of international affairs.

To deal effectively with these responsibilities, it is essential that the Vice President be provided with adequate staff and appropriations. Legislative branch appropriations for the Vice President are not intended to provide the staff support necessary to carry out the functions set forth above.

The $1,531,000 request for 1981 is $61,000 greater than the 1980 authority of $1,470,000. This request is now reduced $20.00 from the amounts initially proposed, in accordance with the President's recent revision of the 1981 budget request. The number of personnel authorized remains at 27 permanent full-time positions.

I shall be happy to answer your questions concerning this request..

SUMMARY OF STATEMENT

Mrs. KADEC. Thank you, Mr. Chairman.

The 1981 appropriation request of $1,531,000 is for expenses necessary to enable the Vice President to provide assistance to the President. The $1,531,000 requested for fiscal 1981 is $61,000 greater than the

1980 authority of $1,470,000. This request is now reduced $20,000 from the amounts initially proposed, in accordance with the President's recent revision in the 1981 budget request. The number of personnel authorized remains at 27 permanent full-time positions.

I will be happy to answer any questions.

DETAILEES

Senator DECONCINI. Do you know how many detailees are currently assigned to the Vice President's Office?

Mrs. KADEC. Yes. We now have one.

Senator DECONCINI. Is that an increase or a decrease?

Mrs. KADEC. No, it stayed the same from last year.

Senator DECONCINI. I have no further questions, or if I do have some I will send them to you. Is that all right?

Mrs. KADEC. Sure, that will be fine.

Senator DECONCINI. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

1980 SUPPLEMENTAL

Question. $66,000 has been requested for the impact of the 1979 pay raise in 1980. How much of the total requirements has been absorbed?

Answer. The requested amount is the full cost of the pay raise. Nothing has been absorbed.

FURNITURE

Question. How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget request?

Answer. We are planning 1980 expenditures of not more than $2,000 for furniture. In 1981, we do not anticipate spending anything for furniture unless something wears out or breaks.

CENTRAL COMPUTER SUPPORT

Question. Has the Office of Administration provided the Office of the Vice President with any computer or information management services over the last year? If so, what services were provided?

Answer. Yes, we have a few small systems running on the Office of Administration's computer, and we use the library when we need to.

Question. What were the charges and how were they financed?

Answer. We were not charged for any of those services. They were funded in the Office of Administration's budget.

Question. Has the Office of Administration, to your knowledge, requested any funds in 1981 for the specific purpose of providing computer or information management services to the Vice President's office?

Answer. Yes, they are requesting funding to operate the hardware in the EOP Computer Center for all users in 1981. They also provide library and records management services to all the agencies of the EOP.

Question. Are there any funds in the budget for the Vice President's office that will be used to procure such services from the Office of Administration?

Answer. No, there are no funds budgeted to pay the Office of Administration for any computer services in 1981. We do not plan to develop any new systems, which is the only computer service they will be reimbursed for in 1981.

NATIONAL SECURITY COUNCIL

STATEMENT OF CHRISTINE S. DODSON, STAFF SECRETARY, NATIONAL SECURITY COUNCIL

ACCOMPANIED BY BARBARA J. DIERING, ADMINISTRATIVE ASSISTANT

BUDGET REQUEST

Senator DECONCINI. The committee will now receive testimony from the National Security Council regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $3,668,000 and 64 permanent positions have been requested for fiscal year 1981 and $101,000 has been requested for the 1980 supplemental.

The committee is pleased to have Mrs. Christine Dodson to present the testimony on these requests.

PREPARED STATEMENT

Mrs. Dodson, your full statement, if you have one, will be inserted in the record. You may highlight it for us.

[The statement follows:]

STATEMENT OF CHRISTINE DODSON

This committee had previously received a budget estimate of $3,725,000 for the expenses of the National Security Council staff during the fiscal year 1981. However, in keeping with the President's decision to balance the budget, the NSC has reduced its current budget request by $57,000 or 2 percent of the personnel compensation category. The NSC is now requesting approval for $3,668,000. After your review of our civilian pay supplemental for fiscal year 1980, mandated by Executive Order 12165, you will find that our fiscal year 1981 budget request has increased by $10,000 over our fiscal year 1980 budget requests.

Mr. Chairman, the membership and general responsibilities of the National Security Council are provided for by law and are well known to this committee. The NSC staff, financed by this budget request, is the supporting staff for the NSC system as it operates to meet the needs and work methods of the incumbent President.

Mr. Chairman, I believe this is a responsible budget. I would be pleased to answer your questions.

INTRODUCTION OF COLLEAGUE

Senator DECONCINI. Please introduce your colleague.

Mrs. DODSON. I would like to introduce Barbara Diering, who is the Budget Officer for NSC.

Senator DECONCINI. Welcome.

SUMMARY OF STATEMENT

Mrs. DODSON. I will make a brief statement by saying that in addition to the $101,000 of our supplemental, $10,000 more are requested. Otherwise the budget is identical to last year's request, and so is the number of positions on the NSC staff.

RELATIONSHIP OF MR. BRZEZINSKI TO NSC

Senator DECONCINI. Is there any reason Mr. Brzezinski is not here to present this testimony?

Mrs. DODSON. Mr. Brzezinski is not a member of the NSC staff and does not testify on behalf of the NSC. The staff secretary does so.

Senator DECONCINI. Is this the office Mr. Brzezinski heads?

Mrs. DODSON. No, Mr. Brzezinski is paid out of the White House appropriations as assistant to the President.

Senator DECONCINI. He is not connected with the National Security Council staff?

Mrs. DODSON. Not at all.

Senator DECONCINI. Does the National Security Council supply Mr. Brzezinski any backup or research?

Mrs. DODSON. Not so much research. What we provide him with is secretarial help.

Senator DECONCINI. Secretarial help?

Mrs. DODSON. Right.

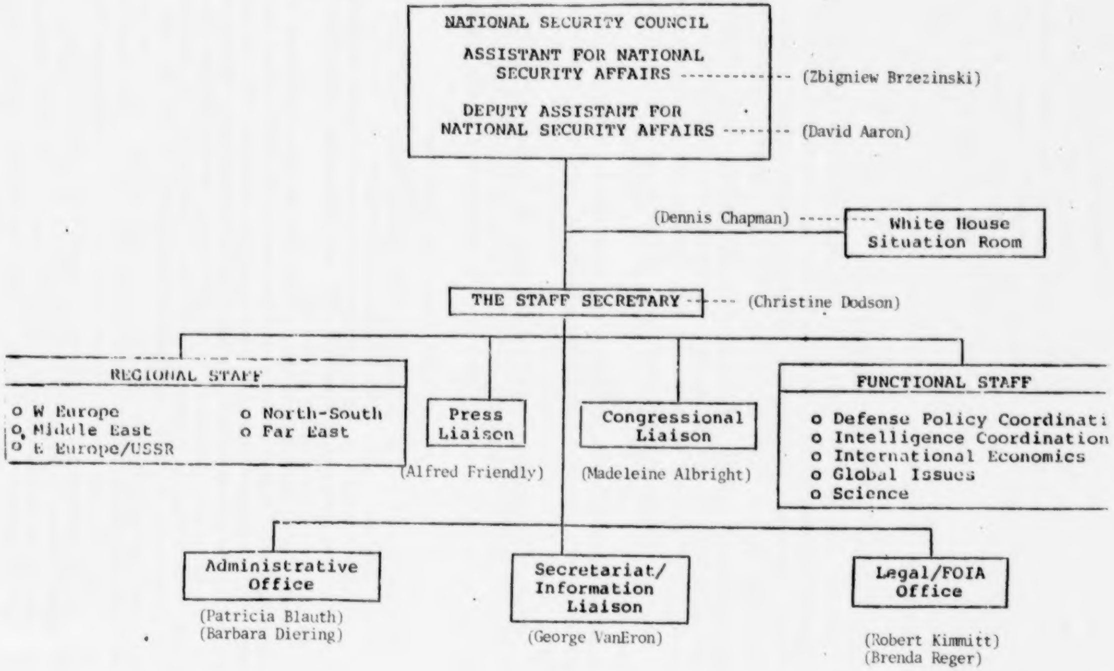
Senator DECONCINI. But he is not part of the Security Council staff?

Mrs. DODSON. No.

[CLERK'S NOTE.—Attached is the organization chart of the National Security Council as prepared by that agency showing Mr. Brzezinski as the "Assistant for National Security Affairs" and as such the agency head. The information follows:]

NATIONAL SECURITY COUNCIL

Assistant to the President for National Security Affairs
and
National Security Council Staff


NATIONAL SECURITY COUNCIL
ASSISTANT FOR NATIONAL SECURITY AFFAIRS
(Zbigniew Brzezinski)
DEPUTY ASSISTANT FOR NATIONAL SECURITY AFFAIRS
(David Aaron)
(Dennis Chapman)
White House Situation Room
THE STAFF SECRETARY
(Christine Dodson)
REGIONAL STAFF
o W Europe
o Middle East
o E Europe/USSR
o North-South
o Far East
Press Liaison
(Alfred Friendly)
Congressional Liaison
(Madeleine Albright)
FUNCTIONAL STAFF
o Defense Policy Coordinati
o Intelligence Coordination
o International Economics
o Global Issues
o Science
Administrative Office
(Patricia Blauth)
(Barbara Diering)
Secretariat/ Information Liaison
(George VanEron)
Legal/FOIA Office
(Robert Kimmitt)
(Brenda Reger)

DETAILEES

Senator DECONCINI. Do you have detailees assigned to your Council?

Mrs. DODSON. We always do. The staff of the NSC from the very beginning of the creation of the staff in 1947 has been a mixed one of civil servants, full-time permanent positions of NSC and people detailed to the NSC by the member agencies of the NSC. These are different detailees from the ones you find in the rest of the White House in the sense that these people come on a basic detail of 2 years; they are full professional members on the NSC staff from the beginning.

Senator DECONCINI. How many detailees do you have?

Mrs. DODSON. Twenty-nine now.

Senator DECONCINI. And the National Security Council does not follow the policy set down by Mr. Carter as to reimbursement?

Mrs. DODSON. No, our reimbursement arrangements are different. Anybody we get from the military or Central Intelligence Agency for our professional staff is fully paid by his agency. Anybody we get from the Department of State and the support staff from the Central Intelligence Agency we pay from day one on. So it is agency by agency.

Senator DECONCINI. So how many detailees were there to the NSC a year ago?

Mrs. DODSON. Twenty-eight a year ago, 26, 2 years ago. In 1976 when we took over, 46. The professional staff and staff in general of NSC has come down by a third since 1976.

Senator DECONCINI. Thank you. I have no further questions.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

Question. The Council is the principal forum through which major issues of National Security Policy are brought to the President for decision.

The budget proposal for the Council shows an increase of under 4 percent. Will the increased workload resulting from the Iran and Afghanistan situations create budget pressures for the Council this year or next?

Answer. Yes, it shall and it already has for this year. The events in Iran and Afghanistan have severely strained the resources of the NSC in that category which constitutes the bulk, 84 percent of our expenditures—salaries. These twin crises are not limited regionally; they affect our country's overall global policy. Thus the workload of not only the Indian Ocean and Persian Gulf clusters has been affected but also of the Soviet, West European, Southwest Asian, defense coordination and economics clusters. The professionals, of course, just extend their working day into the night and weekends; the support staff, however, has to be paid overtime and/or be put on shifts, most of them paid at overtime rates, to cover the extended work hours. It is for this reason that I am particularly unhappy about the further reduction of the 1980 supplemental recommended by the House Appropriations Subcommittee. To support the President's decision to balance the budget, we had agreed with OMB to a 40-percent reduction on the total supplemental amount necessary to meet the increases mandated by Executive Order 12165 of October 1, 1980. The additional $26,000 reduction of that supplemental proposed by the House Subcommittee presents the NSC with an immediate problem of financing the increased expenses of the support staff—secretaries, messengers, machine operators, situation room personnel, et cetera—caused by the crises.

As indicated in my appeal to the Chairman, the NSC would greatly appreciate the restoration of the $26,000 House cut.

Question. The National Security Council proposes to absorb 40 percent of the fiscal year 1980 supplemental requirements for pay increases. The fiscal year 1981 request is for an increase of $168,000, or the total amount absorbed this year in relation to the pay increase. Why can't the National Security Council continue to absorb this $168,000 within its base year as well?

Answer. The fiscal year 1981 request is now not for an additional $168,000 but for $111,000. Even for fiscal 1980, we have indicated that we would not be able to absorb the full $168,000 but only $67,000 of it. By October 1, 1980, and not counting any mandated increases at that time, even assuming the exact same number of people and level of activity, personnel costs will have gone up gradually throughout the year as a result of normal step increases, quality step increases, and promotions, with the attendant increases in overtime hourly rates—as indicated earlier not an insignificant amount in the NSC budget. The additional $67,000 would be minimally required to cover those expenses.

Question. How much is inlcuded in the 1981 budget proposal for the purchase of furniture?

How much is in the 1980 budget request?

Answer. Furniture costs are covered under category 31. "Equipment." For both fiscal years 1980 and 1981 we have requested $20,000 for all equipment. Experience from the past fiscal year or two indicates that about $6,000 to $8,000 of that total is spent on furniture.

Question. Has the Office of Administration provided the National Security Council with any computer or information management services over the last year? If so, what services were provided?

Answer. None.

Question. What were the charges and how were they financed?

Answer. Not applicable.

Question. Has the Office of Administration to your knowledge requested any funds in 1981 for the specific purpose of providing computer or information management services to the National Security Council.

Answer. No.

Question. Are there any funds in the National Security Council budget that will be used to procure such services from the Office of Administration?

Answer. None.

Questions Submitted by Senator Harrison Schmitt

Question. How much did you spend last year for travel?

Answer. $110,000.

Question. Did your budget pay for Mr. Brzezinski's expenses on his trip to Afghanistan?

Answer. I confirmed with Mr. Brzezinski's office that he has never traveled to Afghanistan. Assuming the question refers to his January-February trip to Pakistan, the answer is that the NSC did not pay for any of Mr. Brzezinski's expenses for this trip as it has not paid for any other trip. Dr. Brzezinski's travel costs as well as his salary are paid out of the White House appropriation.

SUBCOMMITTEE RECESS

Senator DeConcini. The subcommittee will stand in recess until 10 a.m. Monday morning.

[Whereupon, at 11:40 a.m., Thursday, April 24, the subcommittee was recessed, to reconvene at 10 a.m., Monday, April 28.]

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

MONDAY, APRIL 28, 1980

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, D.C.

The subcommittee met at 10:03 a.m., in room 1318, Everett McKinley Dirksen Senate Office Building, Hon. Harrison Schmitt presiding.

Present: Senators Schmitt and Laxalt.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

STATEMENT OF JEROME KURTZ, COMMISSIONER

ACCOMPANIED BY:

SINGLETON WOLFE, ASSISTANT TO THE DEPUTY COMMISSIONER
LESTER STEIN, DEPUTY CHIEF COUNSEL (TECHNICAL)
HAROLD BROWNING, TAXPAYER OMBUDSMAN
ROBERT STARKEY, DIRECTOR, COLLECTION DIVISION
JOSEPH KUMP, FISCAL MANAGEMENT OFFICER

OPENING STATEMENT

Senator Schmitt. The hearing will come to order.

Good morning. This morning the subcommittee will receive testimony from the Internal Revenue Service of the Department of the Treasury, a continuation of the testimony begun last week. We expect to hear testimony from IRS Commissioner Kurtz and his staff, and welcome them back before the subcommittee.

The Internal Revenue Service consumes by far the largest budget of the Treasury and touches the life and pocketbook of every American, in sometimes strange and wonderous ways if my constituents have anything to say about it. It is assigned the responsibility of collecting revenues that operate our Government—or almost enough revenues to operate our Government.

This subcommittee, in its oversight and appropriations position, must insure that our tax laws are carried out fairly, impartially and equitably. We must always bear in mind the largest voluntary compliance system is based on due process. I think it is unfortunate we are seeing the deterioriation of that voluntary compliance system. Not all of that deterioration can be attributed to the actions or nonactions of the IRS. Much of it is a function of failure of fiscal and economic policy in the country in other ways. Nevertheless, the Internal Revenue Service and this committee must do everything we can to insure that the voluntary compliance system is enhanced and does not deteriorate further.

Senator Laxalt is here with us today and has some questions for the IRS based on alleged abuses, some of which have occurred in his State of Nevada and other counterparts elsewhere.

For my part, I have examined the Service's detailed justification and will want to discuss with Commissioner Kurtz and his staff his policies and expenditure plans as well as such subjects as accelerated depreciation, IRS debt collection and dividend and interest withholding.

COMMISSIONER WELCOMED

Commissioner Kurtz, we are grateful for your presence, and if you have an opening statement we will let you begin. Otherwise we will take the statement that is already entered into the record, and I will recognize Senator Laxalt.

INTRODUCTION OF ASSOCIATES

Mr. KURTZ. I have no opening statement, Mr. Chairman. Let me introduce those accompanying me. Bob Starkey, Director of our Collection Division; Singleton Wolfe, Assistant to the Deputy Commissioner, who was until recently the Assistant Commissioner for Compliance; Lester Stein, Deputy Chief Counsel; and Joe Kump, Fiscal Management Officer.

Senator SCHMITT. Welcome, gentlemen.

Senator Laxalt, would you like to proceed?

Senator LAXALT. Thank you, Mr. Chairman.

I would also like to thank you for coming in on this Monday morning. We had hoped to conclude this last week, but the problems in connection with the drug enforcement regulations interfered.

PREPARED STATEMENT

Mr. Chairman, I would like to submit a full statement for the record and summarize my concerns briefly.

Senator SCHMITT. Without objection, it will be done.

[The statement follows:]

STATEMENT OF SENATOR PAUL LAXALT

Mr. Chairman, I am pleased today to have the opportunity to examine the activities of our nation's tax collectors--the Internal Revenue Service. Taxes and tax collectors have plagued the world since ancient Egypt, often used by oppressive governments to drain off wealth from the population for their own survival and comfort. When this happened, taxes were often the cause of civil discontent and disobedience. The beginning of our own nation was partly a tax revolt as the colonists objected to taxation without representation to support the regime of George III.

With the end of the Revolutionary War and the subsequent adoption of the new Constitution, the American system of taxation broke with the oppressive tradition. Free men chose to tax themselves for the government and the benefit of all. Compliance was basically voluntary yet universal, stemming, not from a love of taxes, but from a belief that taxes were fair, needed, and for the good of all Americans.

Now, over two hundred years later, Americans are beginning to perceive their taxes differently. From limited criticism of our tax structure, a widespread tax revolt has erupted. Voters in several states have passed tax limitations or tax reductions. Other taxpayers are filing blank federal tax forms. Still, others are ignoring the tax system altogether and are active members in the so-called "underground economy". The estimates of the size of this unreported system vary from $100 billion to $500 billion. Our entire tax structure, which is tremendously dependent on voluntary compliance, is in danger of toppling.

There are two reasons for this modern day revolt. Both are important. The first, beyond the scope of today's hearing, is the overall size of government which places a heavy tax burden on every American. As the size of government grows, so must the revenues to pay for it and so must the tax bite. State and local taxes, federal income tax, social security tax, gas tax, sales tax, excise taxes, estate and gift taxes, property taxes and even an airline ticket tax, are forcing the American taxpayer to say "Enough. The well is running dry. I spend more to support the government than my own children. And I won't take it much more."

The second reason for our tax revolt is the actions of the Internal Revenue Service. A recent national Roper Poll found that 64 percent of the adults of this country think our tax system is totally unfair. After talking to my constituents, listening to their stories about their troubles with the IRS, and reviewing the evidence, I am surprised the figure is so low. The high-handed bureaucratic excesses of the IRS are a national disgrace. Evidence reveals that the IRS singles out areas of the country for special enforcement. It will go completely against Congressional intent and 30 years of past policy by changing its rules to squeeze out more revenue. When it seizes the property of innocent third parties, it makes no provision to rectify this wrong. It creates economic models and then ignores actual taxpayer evidence that runs counter to those models. It gives taxpayers help, often of poor quality, but will prosecute the taxpayer if the IRS is wrong. It will harass taxpayers with litigation, not to mention office intimidation. And when it sees fit, it will even ignore the clear rulings of the federal courts.

Without voluntary compliance, our tax structure would collapse in a day. Barely 2 percent of the tax returns in this country are audited each year. Given this, it is absolutely essential that our tax collection agents are totally fair, honest, and helpful toward our taxpayers. They must also be tough when necessary--no one condones tax evasion. But toughness without honesty, fairness, and helpfulness is a guarantee of disaster.

I. HARMING INNOCENT THIRD PARTIES

One of the most disturbing situations occurs when innocent third parties are harmed by federal agents. When this happens every effort should be made to minimize the damage, yet often the IRS does not do this.

In Nevada, the Humbolt County School District delivered some equipment for repair to a Reno repair shop. The repair shop, under a tax lien, was closed by the IRS and everything inside, even the clearly tagged property of the school district, was sold to pay back taxes. The school was never informed of the IRS actions and did not discover the incident until a representative of the district returned to the shop and found it closed.

On inquiry, the Superintendent was visited by two IRS agents who told him the rules were "very stringent", and there was no provision for correcting the agency's error. The only options now left for the district are to accept the losses or to file a full scale lawsuit in the federal district court, where legal fees could quickly overtake the value of the equipment.

In short, in this case an innocent third party must bear the burden of an IRS mistake with no relief within the agency. It is not just the criminals or the tax evaders that must fear IRS plunder, but innocent parties as well. I am curious, is everybody's property at the mercy of these uncompensated errors? Do we all have to worry that even if we pay our taxes, our property could be erroneously seized and sold to cover another's deficiency without agency relief?

II. AREAS OF SPECIAL ENFORCEMENT

One component of fair enforcement of the tax laws is based on the principle that no area of the country is exempt from enforcement and no area is singled out for special enforcement. Yet the evidence shows that, despite IRS denials, some areas of the country are singled out for particularly close scrutiny.

For example, the IRS has assigned 170 full-time employees to its Las Vegas office, including 56 revenue agents and 26 special agents. Bakersfield, California, which has a larger population than Las Vegas, has only 46 full-time employees and only 4 special agents. Special agents are the agents that develop criminal cases. The 26 special agents in Las Vegas compares with 11 in the largest office in Los Angeles County, which serves a population 10 times as large. I find it impossible to believe that Las Vegas has twice as large an underground economy as Los Angeles, California. A far more likely explanation for the figures is that the IRS is refusing to go after the real underground economy and is focusing instead on the easier pickings within the Nevada service industry. Yet, it is precisely this type of selective enforcement that gives the IRS such a bad reputation. Certainly, like every industry, the Nevada gaming industry has its share of tax problems. But the IRS, blinded by the cash economy, is ignoring a fundamental fact about gaming. As the record demonstrates, the big winner in the industry is the House--not the individual gambler or the hotel employee.

Further proof of selective enforcement of IRS rules can be found in the rate of forcible collections. A private study, using 1976 figures, showed that for every 1,000 deliquent taxpayer accounts, 400 were subjected to forcible collection measures such as levies or seizures in Nevada. This was the second highest rate in the nation. In every IRS district, the rate varied considerably ranging from 403 seizures per 1,000 deliquent taxpayer accounts in Alaska to 129 per 1,000 in Wyoming. This reflects, I believe, wide differences in the enforcement of discretionary policies between IRS districts, a conclusion also reached by the Administrative Conference in 1975.

III. REDEFINITION OF INDEPENDENT CONTRACTORS

Along with fairness, a tax system must be perceived as consistent. Yet, it appears that the IRS, in its never ending quest for new revenue, is perfectly willing to perform a complete about face on its past policies even if it flies in the face of clear Congressional intent.

A case in point is the handling of independent contractors. Millions of Americans perform their duties as their own bosses, perhaps renting space or equipment from another, but in control of the hours and methods of their own occupation. These people are independent contractors and include such diverse jobs as cabdrivers, lobstermen, realtors, barbers, loggers, insurance salesmen, and truck drivers.

For years, the IRS allowed these people to file as independent contractors and not as employees. This avoided withholding on taxes and the range of employer-employee taxes, but they remained liable for special self-employed taxes and, at year's end, for all federal income taxes. Every time Congress examined the issue, it ended up endorsing it. The IRS even audited several of these individuals and allowed the independent contractor designation to stand.

But then in the middle 1970's the IRS, without any warning, reversed its position and began redefining independent contractors as employees. Often this was done retroactively and often the employers were assessed several years in back taxes after their "employees" had long since gone. For future years, the new employees were subject to withholding on their wages and a whole new procedure of bookkeeping was required. Long held business relationships were disturbed for the convenience of the IRS.

The cries of outraged taxpayers flooded the Congress. Congress voted to suspend the IRS actions to redefine the law. That action is still pending before this Congress. In the meantime, the IRS is still prosecuting cases started before the Congressional ban.

The whole issue raises many disturbing thoughts. How many other longstanding IRS policies will be reversed without notice? The ban on taxation of Social Security benefits is based merely on an IRS rule. Will the agency soon change this as well as begin taxing every Social Security recipient in this country? There can be no respect for a system of laws if the enforcers can change the rules whenever they want. Perhaps, in its effort to tax every last penny, the IRS forgot this.

IV. ECONOMIC MODELS

Certainly in some industries, like food service, there is the potential for under-reporting income. When it occurs, it is illegal. And the IRS is entitled to use fair methods of enforcement to uncover these illegalities. But, I am afraid that the IRS does not feel bound by the presumption that a person is innocent until proven guilty. Instead, by use of economic model data, it appears ready to prosecute innocent persons to make sure it gets guilty ones.

In order to evaluate tip income of service employees in Nevada's gaming and food service industries, the IRS creates economic models. These models create an income-reconstruction formula which determines what the tip rate per hour should be. The tip rate is then multiplied by the number of hours worked by the taxpayer to establish what the IRS calls the "corrected tip income".

Although the use of these models has been upheld in court, I question how accurate any economic model can be when it is ultimately based on human behavior. Widespread complaints from members of the service industries indicate that the models are frequently highly inaccurate. Reliance on them by the IRS in this case is highly arbitrary.

Some taxpayers report that the IRS refuses to consider shift differentials when using the models. Obviously, this factor makes a large difference in the amount of tips actually received. Other taxpayers who work showrooms and banquet halls report that no consideration is given to the quality of the show which can either pack the house or leave it half empty. In one case relayed to me, some workers were sent home hours early on slow nights. Their union contracts called for full shift pay, however, the IRS, figuring off the base wages, charged the taxpayers for tips on hours not actually worked at all. Finally, many taxpayers report that even if they keep extensive records, the IRS refuses to accept the results if they differ from the models.

In short, the IRS has taken a real problem and formulated an even worse solution. Often, taxpayers are charged deficiencies on the basis of faulty models and cannot even use their own records to clear themselves. When this happens, the agency alienates yet another honest taxpayer.

V. THE QUALITY OF TAX ADVICE

One of the most important ways to build confidence and respect for a tax system is to provide help in complying with the law. Most taxpayers want to obey the tax laws. When they run into trouble, they do not abandon the system. Instead, they seek help by calling or visiting the IRS office. In 1979, it was estimated that 44 million Americans contacted the IRS for some advice.

During this initial contact, it is crucial that the IRS agents be helpful, honest, and absolutely correct. By doing so, many potential problems are eliminated, and the agency can build a solid reputation. Far more Americans are touched by the agency in this stage than in any subsequent one. I believe it is safe to say that if this division of the IRS were properly run, our entire tax system would operate more smoothly.

Unfortunately, this is not the case. The IRS spends only 8.5% of its budget on taxpayer assistance. IRS advice is often of poor quality and error prone. Yet the taxpayer remains liable for the results based on that advice.

Recently, a $28,000 a year executive working with the Wall Street Journal submitted identical tax data to 5 IRS taxpayer assistance offices. At each office, the IRS was asked to determine the tax liability of the executive. He got back 5 different replies, with differences of up to $300.

The Washington-based Public Interest Research Group did the same test. Seven offices were given identical information about a taxpayer and asked to determine the taxes due. One office reported the taxpayer was entitled to a $812 refund. Another said the taxpayer owed $52.

Last year the GAO called tax offices around the country and asked difficult questions. It discovered a 13% error rate in the replies given by the IRS.

Yet despite these IRS errors, the taxpayer remains liable for any results based on the IRS information. In one case in Virginia Beach, a realtor requested IRS help in determining the tax consequences of the sale of two apartment buildings. He approached the IRS before the sale and carefully followed their directions. But later, the IRS assessed him an additional tax of $47,500 and informed him he had used the wrong forms--even though they had been provided by the agency. Unbelieving, the taxpayer went to court, but the court ruled for the IRS holding, "Regardless of the strong moral implications, the government is not bound by the incorrect statements of its agents."

This was not an isolated case. One constituent of mine reported that the IRS figured his tax for him and gave him a refund. Later, the agency discovered the mistake and sued him to get part of the refund back, along with interest and penalities. The taxpayer hired an attorney, but after months of struggling, the IRS still demanded a return of the refund, interest and penalties.

Every time initial taxpayer help goes sour, the reputation of the entire agency is hurt. One more person joins the ranks of a potential tax rebel, driven there by IRS incompetence.

IV. LITIGATION HARASSMENT

One of the particularly cruel methods of enforcement the IRS has at its disposal is litigation, or the threat of litigation. Clearly, if a taxpayer breaks the law or refuses to pay an assessment, litigation becomes the only alternative. But the IRS goes a long step further and uses the threat of litigation to harass and frighten taxpayers to cooperate with highly questionable IRS actions.

Congressman Hansen of Idaho released in the Congressional Record, an IRS memo addressed to the Regional Counsel, Salt Lake City office from the Group Manager, Boise District office. That memo states in part,

> It is stated you do not wish to litigate a case you may lose. However, failure to attempt litigation will foster their program far more than a loss in court. At least by litigating, the Taxpayer is forced to produce the necessary substantiation. In addition, the Taxpayer is committed to spend time and money defending his position. Perhaps the inconvenience alone will inspire future compliance.

Recently, the U.S. District Court for the E.D. of Pennsylvania decided the case Bryant v. U.S. (44 AFTR 2d 79-6008, Sept. 5, 1979). In that case, Florence Bryant was the bookkeeper for the John Borden & Bros. Company. The Company had a history of late tax payments. In 1972, the IRS investigated the company and assessed Ms. Bryant and Mr. Borden, owner and President, for 100% of then unpaid taxes. Ms. Bryant paid $10 of the assessment and sued for a refund in District Court. The government not only counterclaimed for the balance of the assessment, but also filed a third party suit against Mr. Borden. The Court later found as a finding of fact:

> The government's purpose in filing the counterclaim against Florence Bryant was not to collect the assessed penalty taxes from her, but rather to secure her testimony against J. Wilson Borden who the government wanted to be held liable for the penalty assessed pursuant to Section 6672.

and later went on to say:

> After hearing all the testimony at trial, the Court found it difficult to understand why the government persisted in attempting to collect the penalty against Bryant. As noted earlier, Bryant was just an employee of John Borden & Bros. Inc. who had no financial interest in the company other than securing her very modest salary and it was Mr. Borden who controlled, supervised, and benefited from the company's operations. Not only did Bryant appear not to be the person responsible for the payment over the taxes, but in any event she had so little money from which the government could recover, that it seemed to make little sense for the government to proceed against her.

Yet, the IRS persisted in its actions and the Bryant case went to trial before a jury. The jury returned a verdict for Ms. Bryant and in the present opinion of the Judge, found the IRS claim so groundless that it awarded her over $8,700 in attorney's fees. Although Ms. Bryant was partially vindicated in this case, she did not recover all her monetary losses and, of course, nothing was done to compensate her for going through the ordeal of a trial.

I find this behavior inexcusable. To blandly threaten innocent parties with the prospect of going to trial is but a small step away from an inquisition. Rather than fostering compliance, acts such as these will only destroy the needed cooperation of innocent third parties.

VII. PUTTING THE IRS ABOVE THE LAW

Of all the bureaucratic excesses detailed above, none are as dangerous or destructive as when the agency refuses to obey a court order. No matter how out of hand an agency gets, we have a safeguard in the federal courts. But if an agency ignores a court order, if it in essence places itself above the law, then there is a very real danger of tyranny.

Recently, the IRS announced it would not follow the decision of the U.S. Court of Claims in the case, Hotel Conquistador v. U.S. This announcement was made by an IRS spokeswoman and carried over the wire services. Not only did the agency flout the law, but it made sure that the whole country was aware of it.

The facts of the Hotel Conquistador case are simple. For years, the value of meals provided for employees by the employer for the convenience of the employer has been exempt from federal personal income tax. Thus, hotels or restaurants that provide free meals to employees to keep them on the premises and on call, are not taxed as income to the employees. This has been upheld by the courts.

At the same time, the IRS has demanded and received Social Security taxes from employers and employees and federal unemployment insurance taxes from employers on the basis of the meals. The Tropicana Hotel, run by Hotel Conquistador Inc., disputed the IRS tax assessments and took the issue to court. The Tropicana won before the U.S. Court of Claims last July. On January 14 of this year, the U.S. Supreme Court denied review.

Immediately after the Supreme Court declined review, the IRS announced that it would ignore the Court ruling and continue to assess the taxes. "The IRS...will not follow the decision by the Court of Claims in the case of Hotel Conquistador v. United States", the agency said.

The reasoning of the agency is as follows. Although the Court of Claims ruled in favor of the taxpayer, two earlier Court of Appeals cases, one in 1967 and one in 1943, ruled in favor of the IRS position. In the words of Commissioner Kurtz in a letter to me:

> In view of the importance of the potential revenue loss, and the absence of a Supreme Court decision or unanimity among the Circuit Courts and Court of Claims, we believe that the Internal Revenue Service should adhere to its longstanding position. These taxes are a part of funding for the benefits payable under the Social Security System, and their loss is to be avoided where our view of the law is supported by two Circuit Courts of Appeal.

In addition, Mr. Kurtz emphasized that the issue is pending for decision in several additional U.S. district courts and in the Fifth Circuit Court of Appeals.

In short, the IRS is using what it terms legal uncertainty to justify enforcing its view. Most legal scholars in a similar situation would follow the latest decision and the decision from a court with special expertise, in this case the Court of Claims. But the IRS, facing an adverse decision, has declared the issue uncertain and has continued to do as it pleases.

I wonder how the IRS would like it if taxpayers decided to ignore court rulings and stop paying taxes. What type of example does this governmental agency want to set when it ignores court decisions? How can it expect millions of Americans to continue to obey the law when it does not?

CONCLUSION

In short, I have deep misgivings about a number of activities of the IRS. We appear to be witnessing an agency totally out of control, running roughshod over taxpayers and making a joke out of our rule of laws. The cases of abuse are easy to document and too numerous to count.

Congress must reexamine the actions and policies of the IRS in detail. I am unsure whether we must start at the bottom and rebuild the entire agency, or whether we can reform the present body. But reform it we must, or we will see the growth of the current tax revolt into a full-scale revolution.

PURPOSE OF TODAY'S HEARING

Senator LAXALT. I am pleased to have an opportunity to examine some of the actions and practices of the Internal Revenue Service. We hear much these days about the so-called tax revolt, and we are presented shocking statistics about the size of the underground economy. The reason for this, I believe, is twofold. The first, beyond the scope of today's hearing, has to do with the overall size of the tax burden in this country. The second, I think, is due to the perceived abuses of the IRS.

A recent Roper poll showed 64 percent of the U.S. adult population believes that our tax system is totally unfair. I can't lay that all at the door of the IRS admittedly. Much of that has to be blamed on the institution of Congress.

As Mr. Kurtz will undoubtedly agree, the foundation of our tax system is voluntary compliance. If the overwhelming majority of taxpayers did not honestly pay their taxes accurately and on time, our tax structure would topple in 1 day. The fact that 44 million taxpayers contacted the IRS before filing their returns shows ours is a system of cooperation and not coercion. As long as Americans believe they are getting a fair deal, they are remarkably agreeable to bearing the burdens of citizenship, including taxation. But people will only willingly pay their taxes as long as they feel the IRS is honest, fair and helpful.

Just how fair, honest, and helpful our tax agents are constitutes the subject of today's hearing. I want all of you to know I don't look at this as an opportunity to get the IRS. I hope the inquiry we get into in these various matters would be mutually helpful.

One of the ongoing struggles we have in the West lies principally within the Department of Interior, and specifically with the Bureau of Land Management. Last year we conducted some oversight hearings on the Bureau in various States in the West and found it was mutually helpful, that there was a misunderstanding between the field people and those here in Washington over policy direction. I would hope that perhaps that goes to the center of the problem we have here. So I am not here on any kind of IRS vendetta. Instead, I look at this as an opportunity to examine some highly disturbing reports of IRS abuses. Hopefully, it will shed light on some shocking stories. If the present animosity toward the IRS is not moderated quickly, I suspect the tax revolt will soon grow to unmanageable proportions.

So throughout today's hearing, the questions I want to keep in mind are is this the action of a fair and honest tax system? Will this benefit or help further voluntary compliance? And last, does it reflect the integrity or the confidence needed to make our tax system work?

Having said that, Mr. Commissioner and members of the panel, let me proceed into some individual items that have occurred within the State of Nevada, which I rather suspect may be symptomatic of problems we are experiencing in other States as well.

TROPICANA CASE

First, I would like to discuss the so-called Tropicana case, which arose out of the Tropicana Hotel in Las Vegas. Mr. Commissioner, I am sure you are aware of the recent decision by the Court of Claims in *Hotel Conquistador* v. *the United States*, in an admittedly complicated and uncertain area of law. Given that uncertainty, I would think the Service would have decided to recognize the expertise of the Court of Claims. As you recall, that matter was litigated and the Court of Claims came down with a decision which was adverse to the declared policy of IRS. But in fact, the agency did not follow the Court of Claims decision. Even worse, it publicly announced this fact to the world.

I would appreciate, Mr. Kurtz, if you would comment on the effect these actions of the IRS would have on most taxpayers, recognizing that this particular case received a lot of publicity? If there is a Court of Claims ruling, why doesn't IRS live with the ruling, and if we are going to have to have a suspension period why not have a suspension period favorable to the taxpayer rather than IRS?

Mr. Kurtz. Senator Laxalt, there are several reasons why we announced we are not following the Hotel Conquistador decision, the most important of which is that there have been two Court of Appeals decisions to the contrary, in the sixth circuit is *S.S. Kresge Co.* v. *the United States*, and in the ninth circuit is *Pacific American Fisheries* v. *the United States*. So that there is now a division, two circuits holding in favor of the Internal Revenue Service and the Court of Claims holding in favor of the taxpayer in this instance.

WITHHOLDING SOCIAL SECURITY TAXES ON MEALS

At the moment there is another case, *Rowan Co.* v. *the United States*, pending in the sixth circuit, and five District Court cases pending on the same issue. The issue is a particularly important one fiscally and relates to the social security trust fund. The *Hotel Conquistador* case, as you know, deals with the question of whether meals furnished hotel employees are subject to the social security taxes. In our view the law has been clear for many, many years that those payments are subject to the social security tax, and almost uniformly the payors and payees have paid the tax. The meal allowance then becomes part of the retirement base for the employees. So that a decision which would remove both the tax and the creditable payments would have the effect of reducing the old age pension for large numbers of relatively low-income employees. I suspect that the reason meals were originally included in the base was to provide low-income employees with higher pensions.

A problem arises if the meals are included in the retirement base but not subject to the tax. You would have substantial losses in the social security trust fund over the years. That is, obviously, paying benefits on amounts where the tax has not been collected.

It is unfortunate that as to such a widespread practice, there is a disagreement among the courts. We are in the position either of following the Courts of Claims, in which case we would not be following the decisions of two other Circuit Courts, or following the Circuit Courts and not following the Court of Claims. We cannot follow all the courts because there is a division. We would hope, with the pending cases, that the issue would be resolved.

I might say at the same time we are working on legislation to resolve the issue. The most important part of the legislative proposal would be that there be consistency between the tax base and the retirement base. Congress, of course, can decide whether it ought to be taxed and included in the retirement base or exempt from tax and not included in the retirement base. Obviously those two sides should be consistent. We are in the awkward position under Hotel Conquistador where they might not be.

Senator LAXALT. I can understand the policy reasons behind your jurisdiction decision, and I must say, I can't seriously disagree. But in terms of these particular taxpayers, we have a case, as we lawyers would say, on all fours.

Mr. KURTZ. There are two other Courts of Appeals decisions.

Senator LAXALT. I understand, but one of the cases came down in 1943 and the other in 1967.

Mr. KURTZ. That is right.

Senator LAXALT. Which means they are a little bit dated. Here we have a case involving taxpayers in a particular situation in the current time period. Let me ask you Mr. Commissioner, is the matter of whether or not you adhere to the Court of Claims decision a matter of administrative discretion within IRS, in your estimation?

APPLICATION OF DECISION TO OTHER TAXPAYERS

Mr. KURTZ. Let me say in that case itself, Hotel Conquistador, that taxpayer has won and that taxpayer prevails and refunds have been paid in that case. The question is its application to other taxpayers. We have taxpayers in the sixth and ninth circuits, for example, who have been holding those cases for almost 40 years, in one, well set law.

Senator LAXALT. Yet, if there has been relief granted to the individual taxpayer, why isn't there an administrative policy to protect similar, comparably situated taxpayers?

Mr. KURTZ. It could be, but it is a matter of administration of the tax laws and developing the law as to the positions that the Service takes where there are conflicts among various courts. Obviously we are obligated to follow the law. That is what we view administration of the tax to be. The question is, what is the law where you have a series of courts deciding the same issue essentially differently? And we have, as I say, other pending cases on the issue. Our hope is that those cases will result in a clear resolution of the issue.

Senator LAXALT. Do you have any timeframe when you think that final determination will be?

Mr. KURTZ. The case in the fifth circuit has already been argued, so it is pending before the court. Other cases are pending in the District Courts.

Senator LAXALT. You can understand cutting through all the legal rhetoric that is obviously involved here, the difficulty of taxpayers understanding why in the world IRS wouldn't comply with the ruling that affected that situation. It makes the IRS appear to flaunt the law.

Mr. KURTZ. I understand and it is very unfortunate. Occasionally these situations arise—they are not very frequent—where you have Courts of Appeals, and in this case the Court of Appeals and the Court of Claims, reaching contrary decisions on the same issue. In a matter as important from a fiscal point of view as this, we feel obliged not to abandon what has been the well settled law for years and reverse ourselves on one Court of Claims decision.

Senator LAXALT. This is a matter of policy within the IRS. If you chose within the agency, I assume you could choose to follow the Court of Claims ruling and apply this ruling to these people.

Mr. KURTZ. And not follow the two Courts of Appeals.

Senator LAXALT. You could do that.

Mr. KURTZ. Yes. The revenue loss would be very substantial.

RESOLUTION OF WITHHOLDING PROBLEM

Senator LAXALT. I understand that. But apparently the IRS has made the determination to suspend this whole situation pending final resolution. Is that where you are?

Mr. KURTZ. That is correct. We would like to emphasize the other fact that we are working on a legislative proposal for the Congress to resolve the issue. From our point of view administratively, the most important aspect is that the tax side and benefit side be consistent either way, either included or not included, but the same for both purposes. And we are not now in that position. So we are developing a legislative proposal which will present that option to the Congress.

Senator LAXALT. In a case of this kind when you finally arrive at an important policy decision with a significant impact upon taxpayers, what is the decisionmaking process? Who calls the shots, do you?

Mr. KURTZ. With close consultation with the Chief Counsel in this case, yes.

BASIS FOR DETERMINATION

Senator LAXALT. Then was it based almost entirely on legal considerations?

Mr. KURTZ. Yes, legal considerations and the revenue impact that it would have on the social security trust fund, but primarily on legal considerations, considering the litigating history of the case, the fact that this, as I said, has been a well settled practice throughout a broad industry for many, many years, and analysis both of the cases and of the pending cases.

Senator LAXALT. How do you factor in taxpayer reaction, if at all?

Mr. KURTZ. We certainly do take it into consideration in a way I can't measure, but it certainly is an important factor. Let me say that obviously we would prefer not to be in this situation.

Senator LAXALT. I understand that.

Mr. KURTZ. But we are completely in the middle of the action, in the position where we cannot consistently follow the various courts that have decided this issue, because they are not consistent with each other.

Senator LAXALT. Do you receive any input or recommendations from the people on the ground in Las Vegas, your field people?

Mr. KURTZ. Not on the appeals question, no. I am not quite sure, Senator, what you mean by people on the ground.

Senator LAXALT. You can see what has happened. This determination was made purely in Washington, D.C., and almost entirely based on recommendations of General Counsel, which rested almost entirely on legal considerations.

Mr. STEIN. The normal process and responsibility for deciding whether to go up on appeal or recommend certiorari has been delegated to the Chief Counsel. And when you ask whether people were consulted in the field, our lawyers in the field probably had input at the lower stages of the case on the appeal level. But once it came to the certiorari issue, the final decision was made in our office. If I may say, we recommended certiorari. The Department of Justice agreed with that recommendation. The Solicitor General filed a petition for certiorari, but the Supreme Court, in its discretion, decided against certiorari. Under the rules of the Supreme Court, there is no right to certiorari, but it is purely a matter of discretion.

Senator LAXALT. I understand. I understand the legal side, and I suppose if I approached this purely as a lawyer sitting as General Counsel I would have more of the same recommendation. But getting back to the points raised by Senator Schmitt and myself, we have a voluntary system. To the extent that voluntary system works depends on whether or not the taxpayers feel they have been dealt with fairly. To address to these people a cold legal argument, without apparently factoring this in from the public relations standpoint, to me presents a bit of a problem. It seems to me if you should have listened to the people on the ground—because your actions are creating a problem for IRS among thousands and thousands of taxpayers who feel the IRS arrogantly has come into this, made a cold legal determination, placed itself above the law, and this presents some deficiency in the administration of the act.

IMPACT ON SOCIAL SECURITY RETIREMENT

Mr. KURTZ. I agree that has been a reaction to the case. There is an aspect of the whole problem not being considered by the taxpayers at this point. If we had said we will now follow the Hotel Conquistador decision, one likely result would have been that sooner or later a decision would be rendered excluding that income from the retirement base. So you would have people facing lower social security payments later on. People obviously tend to focus on today. I am not sure we would be doing a service for the taxpayers to have the retirement allowance reduced based on the fact this income is not subject to the tax.

Senator LAXALT. I rather suspect, Mr. Commissioner, if you would address that argument, it wouldn't fly too well.

Mr. KURTZ. I agree with that.

Senator SCHMITT. Would you yield?

Senator LAXALT. Surely.

Senator SCHMITT. Do you work with the Social Security Administration in making these kinds of judgments?

Mr. KURTZ. We did discuss the situation with the Social Security Administration.

Senator SCHMITT. What was their recommendation?

Mr. KURTZ. They recommended certiorari in this case, to have the issue resolved by the Supreme Court, to have the Supreme Court resolve the issue one way or another, but the Supreme Court declined certiorari.

CONFLICTING COURT CASES

Senator SCHMITT. One further question, where you have conflicting court cases, isn't it normal—and I ask this question of the lawyers in the crowd—isn't it normal to take the more recent decision?

Mr. KURTZ. Not necessarily. It depends. If you have a more recent case in the same court of appeals that reverses an earlier case, yes, certainly. But where you have different courts deciding the issue differently,we would not necessarily take the latest decision. We would take the one we believe, as lawyers and tax administrators, is more close to the right answer and hope that sooner or later the Supreme Court will take the case and resolve it.

Senator LAXALT. Pending final resolution of these matters, wouldn't it make better sense in terms of taxpayers' perception for you to come down on the side of the taxpayers instead of the Government?

Senator SCHMITT. It would break the tradition, Senator.

Mr. KURTZ. If we did that, we would be facing very large refund claims that would have to be paid out. It is not a question of simply suspending it temporarily. If we decided in favor of the Hotel Conquistador, we would be paying out large amounts of money in refunds.

PROTECTION OF TAXPAYER RIGHTS

Let me add to that, taxpayers can now protect their rights as against the eventual resolution of the matter by filing refund claims, and many have and will file refund claims. They can either pursue those claims to litigation themselves, or, as many will do, simply file the claim and let it sit. That way their rights are protected if it eventually turns out the Service was wrong.

Senator SCHMITT. If they don't file a claim, what happens?

Mr. KURTZ. The statute of limitations will eventually bar these claims if they don't.

Senator LAXALT. Have the taxpayers out there been apprised of that, and are they taking on a peril unless they file a refund claim?

Mr. KURTZ. Yes, we have had discussions with industry groups who have indicated to us that this is the procedure that will be followed. We have talked to them about a relatively simple refund claim procedure which will hold these cases open.

Senator LAXALT. What will be the policy of IRS if the circuit court decision comes down in favor of the taxpayers?

Mr. KURTZ. In the fifth circuit, we would have to have an agonizing reappraisal of the situation at that point.

Senator LAXALT. You don't offer much hope to the taxpayer even if it should come down in his favor.

Mr. KURTZ. Let me say if it came down adversely—it is hard to predict what would happen. Certainly one possibility would be we would try again to get a Supreme Court resolution of the issue.

Senator LAXALT. What can I do as a Senator representing these people in support of their case, if anything, to cause you to change your policy as it has been applied here?

Mr. KURTZ. Well, as I said, we will be presenting a legislative proposal which will present that option.

Senator LAXALT. You don't offer any dim hope of administrative resolution?

Mr. KURTZ. It depends what happens with the litigation. That may resolve the issue.

Senator LAXALT. The only point I want to make, here again it seems to me in cases like this the IRS has an abundant opportunity—and I recognize the administrative problems—but they have an abundant opportunity where the legal situation is in doubt occasionally to come down in favor of the taxpayer. This would give IRS a better image out there in terms of fairness, and they would perceive that the IRS, instead of constantly coming down against them, occasionally comes down in what they believe is their true legal position.

SOCIAL SECURITY PENSIONS

Mr. STEIN. Senator, I would like to add a footnote to the problem. There is another aspect. You can have some employees who would not want a refund in order to assure that their ultimate pensions would be higher, and therefore we have to think about them, too. And if we were to tell them, "Take your money," they may say no. What would be our authority in that situation, in as much as there are two circuit court decision which we think properly represent the law. So until the law is ultimately resolved, the decision was to go the way we have gone.

Senator SCHMITT. Are you acting as the Social Security Administration's agent in this when you make that kind of statement?

Mr. STEIN. No. These were some of the considerations.

Senator SCHMITT. I understand that.

Mr. STEIN. We discussed the entire question with the social security representatives. There were quite a number of meetings.

Senator SCHMITT. But it would seem to me that your obligation is more specifically relative to the taxpayer, their obligation is relative to the social security recipient, and if there is a conflict, then a legislative proposal needs to be made to Congress to resolve that conflict. But you shouldn't be trying to resolve it administratively.

Mr. STEIN. As the Commissioner has indicated, we do have a legislative proposal that is in its final stages.

Senator SCHMITT. I know. But by your argument in defense of the Social Security Administration, it sounds to me like you are abrogating your responsibility to the taxpayer.

Mr. STEIN. Senator, I would look at this primarily from the point of view of making a refund.

Senator SCHMITT. It seems to me your bias should be on the side of the taxpayer, as Senator Laxalt has referred to previously. It is the Social Security Administration that is the advocate for the recipient of social security benefits. Again, where there is a conflict, then we must try to resolve that in terms of new law. You shouldn't be trying to resolve that for the Social Security Administration.

Mr. KURTZ. No, we are not trying to resolve that for the Social Security Administration. It seems proper to consult with the Social Security Administration where you have a decision that has two sides. That is the only point we would make.

Senator SCHMITT. I have nothing against consultation. But I wish you would come down as the advocate for the taxpayers and let us resolve the other issues.

Excuse me for interrupting.

HUMBOLDT SCHOOL DISTRICT CASE

Senator LAXALT. Let's proceed to another matter that arose out there that received a lot of publicity, and I think publicity that wasn't all that beneficial to IRS. It involved a situation where the IRS closed a Reno repair shop and sold the assets to satisfy a tax lien. Unfortunately, the repair shop was full of tagged property of the Humboldt school distirct. This property was sold. On inquiry, the superintendent of schools was informed by two IRS agents that there is no provision in the IRS rules to correct the agency's error or to make restitution. The only recourse left for the school district is to file a costly lawsuit.

Mr. Kurtz, is it true the IRS makes no internal provision to provide restitution to innocent third parties when their property is seized and sold and the IRS is in error?

Mr. KURTZ. Let me make two comments. First, overall the case has now, with your help, come to my attention. There are a lot of problems with it. It was not handled well. We have recently appointed in the national office a taxpayer ombudsman to handle problems of this kind. Mr. Browning, who is here, is looking into that problem.

What the Internal Revenue Service Code provides is that taxpayers whose property is erroneously sold, as in this case, can be paid any losses they sustain, but the Internal Revenue Code provision limits payment to the proceeds of the sale. In this case the claims exceeded the proceeds of the sale, so that is why we had a problem under the specific provision of the Code designed to deal with this situation. That is not to say that there is no other way to deal with the situation. Our hope is that we can find a way. Mr. Browning will be in touch with the taxpayer and we will do whatever we can to get the situation straightened out. It is an error. We were wrong. We are trying to straighten it out as best we can.

Senator LAXALT. I appreciate that observation. You are batting 500.

Senator SCHMITT. At least you are still in the ball game.

STAFFING ALLOCATIONS

Senator LAXALT. I have discussed with you before, Mr. Commissioner, the matter of what we consider to be an inordinate number of special agents and other agents in the Las Vegas area. At the present time the Las Vegas IRS office has 26 special agents assigned to it. This compares with only 11 special agents in the largest district in Los Angeles County, which serves a population 10 times as large. Our information out there indicates that the IRS is really going after what we call easy cases—the service employee that files a return every year but under reports the amount of tip income—while ignoring the tougher underground economy problem. If we saw some concerted effort with all these agents getting at the real problem of unreported incomes, it would be one thing. But we see developing out there a pattern where the service employees—waiters, waitresses, bartenders—are being hassled on an individual basis. I would like to know why we have what appears to be to us an inordinate number of special agents sitting there in Las Vegas and hassling a lot of people who file their returns. There is more and more concern that we in Nevada, and particularly in Las Vegas, are being singled out by IRS. This is the perception and I would like to have the Commissioner speak to that.

Mr. KURTZ. I will ask Mr. Wolfe to speak to that.

DIFFERENT BASIS FOR STAFFING ALLOCATIONS

Mr. WOLFE. Senator, let me try to divide this into two parts. As you know, we have Internal Revenue agents whose responsibility it is to examine returns that do not involve criminal tax fraud. We also have special agents, whose basic responsibility is to investigate potential for criminal tax fraud. The Internal Revenue agents, the first group, we assign by a formula we call a discriminant function formula.

Senator LAXALT. What was the term again?

Mr. WOLFE. Discriminant function formula.

Senator LAXALT. Discriminant function formula?

Mr. WOLFE. Yes.

Senator LAXALT. What in this world does that mean?

Mr. WOLFE. This means that every return in the United States is given a score as it is processed through the computer. Your return and my return are scored. We know the scores of returns by districts.

Senator LAXALT. The score indicates what?

Mr. WOLFE. The higher the score, the more likely there is an error in the return. We develop this formula through a scientific sample of returns every 3 years. We assign revenue agents all over the country through the use of this system. Districts which have more high-scored returns are assigned more revenue agents. And we assign our Internal Revenue agents to the Reno district, and Las Vegas comes under the Reno district, through the use of the discriminant function formula, and it is based on potential work load that may exist in that district compared to potential workload in other districts.

Special agents are assigned differently. The reason I am bringing this out, Senator, is so you will understand the way we do it. While population is one factor in resource allocation of special agents, the potential for noncompliance is the main factor in assigning special agents, and this, to some extent, is an empirical process. The way we do this with our field people is to bring our regional people in to Washington—Reno is in the western region. We bring all these regional commissioners in and we sit down and decide how to allocate resources. We have about 2,800, almost 2,900, special agents in the United States. So we divide them by regions and we let the regions generally divide among the districts in the region.

Senator LAXALT. What does the region consist of in our part of the world? Is it broken out in different regions or is it San Francisco?

Mr. WOLFE. That is the western region, and it consists of most of the Rocky Mountain States, California, the Pacific Northest, Alaska, and Hawaii.

Senator LAXALT. Are we in the same region for the purpose of this type of assignment as California?

Mr. WOLFE. Yes, you are.

Senator LAXALT. So the considerations in assigning special agents and other agents are done in the same fashion.

Mr. WOLFE. No, revenue agent allocations are made by district based on the discriminant function formula; special agents on a more empirical basis as I described. And we do not assign either revenue agents or special agents by cities, Senator, we assign them by districts. For example, the Los Angeles district covers, as you know, all of southern California, whereas the Reno district covers the State of Nevada. We only basically have agents stationed in two cities in Nevada—Reno and Las Vegas—and, of course, Las Vegas being the largest city, we have the largest number of special agents assigned there. The allocation of special agents is based mostly on the per capita income and the potential for noncompliance, whereas revenue agents are assigned based on potential work there as determined by the discriminant function formula.

POTENTIAL FOR NONCOMPLIANCE

Senator LAXALT. What do you mean by the potential for noncompliance?

Mr. WOLFE. Historically, where there is a lot of money changing hands, we have found that the potential for criminal tax fraud is higher. And not only do we have, as you know, legitimate operations in Nevada, we have some that are not legitimate, some that are violating State laws as well as Federal laws. For example, bookmaking, we are familiar with some of the illegal bookmaking. We respond to that. And we have other industries, not necessarily associated with the gambling industry, but which make their livelihood as a result of the gambling industry there.

Senator LAXALT. Wouldn't these same conditions apply to an area like southern California?

Mr. WOLFE. They apply to an area like southern California, but not concentrated in one city like it is in Nevada.

Senator LAXALT. I would estimate—and I have no way of finding out and I don't suppose you do either—there are probably more unlicensed bookmakers in Los Angeles than in Las Vegas.

Mr. WOLFE. I can't answer that because I don't know. But Las Vegas, being an area where there is a gambling industry, there is a concentration of people not only in the legal aspects, but illegal aspects.

Senator SCHMITT. If the Senator would yield. Basically that argument would say if you make gambling legal, you increase the illegal aspects.

Mr. WOLFE. I don't know if that is the case. It is very difficult to say whether it will or will not.

Senator SCHMITT. But there are two different kinds of things. We may have some experience outside of Nevada where legalized gambling has attracted organized crime elements. But I don't think that is what we are talking about. I think with your looking at returns, what you are looking at is the propensity for tax fraud by those that are going to file a return and be relatively diligent about that.

Mr. KURTZ. No, there are two different groups of agents, and that is the point Mr. Wolfe was trying to make in the beginning. Regular revenue agents who examine returns are assigned on the basis of where returns with a higher score indicate statistically a high probability of error. And that is really quite a mechanical process. These are regular revenue agents. Special agents investigate only criminal violation of the tax laws, that is, either nonfiling or filing fraudulent returns, violating the wagering tax laws, and people with income from illegal sources as well as people with income from legal sources who fail to report it and intentionally evade taxes. There is no mechanical formula for determining that. It is based on the judgment of the people on the local scene, experience, and other factors which are less susceptible to statistical formulation.

Senator SCHMITT. But it would seem from the answers to the question that Senator Laxalt asked that it is the IRS's assumption that where there is legalized gambling resulting in an exchange of large amounts of money, that there will be more of this fraudulent activity than in an area like Los Angeles or others where there is not legalized gambling.

Mr. WOLFE. I don't think it really has to do with legalized gambling. It is where there is a lot of money. For example, we find in an area where a lot of money is being spent that there is a propensity for criminal tax evasion.

Senator SCHMITT. But that is where you know there is a lot of money being spent because it is legal.

Mr. WOLFE. I think that in any other place you will find the same thing. I think historically the results of what we have done there have shown that there has been criminal tax fraud. We are involved in looking at skimming operations at some of the casinos, and some are being prosecuted for criminal tax evasion.

Senator LAXALT. Some have been prosecuted and acquitted.

Mr. WOLFE. That is correct.

Senator LAXALT. In fact, your track record on criminal prosecution in Nevada isn't that good.

Mr. WOLFE. They have some before the grand jury.

I have some statistics here on our criminal investigation cases for fiscal year 1979, nationwide and for the Reno district. We had 15 convictions in the Reno district in fiscal year 1979, 2 acquittals, and 2 dismissals or mistrials. I would like to submit the chart I have been reading from for the record.

[The information follows:]

Criminal Investigation Cases Fiscal Year 1979

Criminal cases	Nationwide		Reno district	
	Number	Percent	Number	Percent
Investigations initiated	9,780	....	158	[1] 1.62
Investigations completed	8,952	....	93	[1] 1.04
Prosecutions recommended	3,338	....	46	[1] 1.38
Indictments/informations	1,820	....	22	[1] 1.21
Convictions	1,611	[2] 84.7	15	[3] 79.0
Acquittals	86	[2] 4.5	2	[3] 10.5
Dismissals/mistrials	205	[2] 10.8	2	[3] 10.5

[1] Percent of national total.

[2] Percent of total cases nationwide (convictions, acquittals, dismissals/mistrials).

[3] Percent of total cases in Reno district (convictions, acquittals, dismissals/mistrials).

APPARENT DIFFERENCES IN ALLOCATIONS

Senator Laxalt. The thing that strikes me in reaching the point Senator Schmitt was making is that you are basing the allocation of these agents on what you deem to be a freedom of money. For the life of me I cannot believe, in comparing southern Nevada with southern California, that there is more money in circulation in southern Nevada of the type you are worried about than there is in southern California.

Mr. Kurtz. But there aren't more agents in Nevada than California.

Senator Laxalt. Not totally, no. Let me take Bakersfield. We have presently 170 full-time employees in the Las Vegas office. That includes 56 revenue agents and 26 special agents. Now Bakersfield has roughly the same population than Las Vegas and they only have 46 full-time employees in contrast to 170 and only four special agents. Now it seems to me that this smells very much like we are paying a price for being legal in Las Vegas. And I would like to know whether it is a policy of the IRS to target us in Nevada.

Mr. Kurtz. Senator, no targeting is done in terms of someone sitting down and saying, "Let's go after Las Vegas," or "Let's go after Bakersfield."

Senator Laxalt. The only way I can gage it is the number of horses you have there, and you have a larger number of horses there per capita than any other place in the country.

Mr. Kurtz. Those decisions are made essentially based on experience of the people who are in the field as to what the potential is of special agent cases.

COOPERATION WITH STATE OFFICIALS

Senator Laxalt. I know, and there is a syndrome. I am not holding you people accountable. I have lived with this problem for a long time. When I ran for Governor many, many years ago the biggest issue we had in that State was a total breakdown in relationship between the State gambling people and the Feds—and principally the FBI and IRS. I became a strong exponent of the FBI particularly during that race, even though very often I wondered if I was riding the right horse or not. This was before the recent controversy. Then when I became Governor I flew to Washington and got in touch with Mr. Hoover and said, "This can't be. We are in a tough industry with worldwide implications. We cannot monitor gambling by ourselves. We have to have your effort." He understood, and at a meeting here we entered into an agreement for total mutual cooperation, and from that day until this that agreement has worked. I tried to arrange the same thing with the IRS. It just did not work out because there is a syndrome on the part of IRS that anything associated with gambling, legal or not, had to be wrong, and it became a one-way street. Despite persistent efforts on my part, I could not overcome the IRS syndrome that if you are engaged in legalized gambling, somehow you are dishonest and require extra surveillance. I look at these numbers and it confirms in my head that is a continuing belief somewhere in IRS.

Mr. WOLFE. Let me assure it is not the belief of the national office. We don't get that deeply involved in it. We try to administer the Code from here in a fair and impartial manner. As I say, the local decision, of the western region, where they allocate their resources, has been this way. We do ask for an accounting of this each year. We have an accounting to be sure they are properly utilized, and I can assure we will continue to see that they are distributed among their field offices in a fair and rational way.

Senator LAXALT. I would appreciate very much if you would give continuing attention to this problem. You talk about perception. We have a problem. Our people by and large, and this includes respected opinion leaders, think you have targeted us. Right or wrong, this is a perception, and I think it is a harmful perception. I would like you to know that we in Nevada associated with the gambling industry are not all bad, that we are entitled to the same constitutional rights as anyone else, and that maybe we are honest.

Mr. WOLFE. You are.

Senator LAXALT. I would appreciate if you took into account those considerations when you allocate your agents.

TIP INCOME

So much for the special agents. Let me discuss for a moment the matter of tips, an ongoing problem, one I have lived with this problem for a long, long time.

I am just wondering in terms of the overall system whether our policy as applied by the Government is a wise one, because I have strong suspicion the compliance is minimal throughout the country, minimal in terms of reporting this income. I have often wondered, Mr. Commissioner, if we should take a second look at the essential theory that a gratuity given for extra service is income as opposed to being a gift. Is there anything going on in IRS to indicate that we currently have a policy that is counterproductive?

Mr. KURTZ. We have looked at, on a continuing basis, and particularly recently, on the overall question of tips and how tips ought to be taxed. I might say that, take your point whether tips ought to be taxable, I think it is fair to say we feel quite strongly they ought to be taxable.

Senator LAXALT. That is in terms of its being a revenue source.

Mr. Kurtz. No, in terms of fairness and in terms of the basic structure of our tax law. We have an income tax. The only reason to have an income tax rather than some other kind of tax is the desire to allocate the tax burden according to a person's overall ability to pay, whether their income is from interest and dividends or tips. And there is no reason why people with the same amount of income ought to have a different tax because one earns wages in a factory or tips in a restaurant. They are in the same situation economically to support the Government.

There are obviously, as you point out, severe compliance problems in the tip area. Our experience is that compliance is quite poor.

REPORTING OF TIP INCOME

Senator Laxalt. What would you say percentagewise is the extent of compliance in accordance with reporting income in this country, 5 percent, 10 percent? Have you run any studies on this?

Mr. Kurtz. The reason I hesitated is we do not have what I would term reliable statistics because obviously it is extremely hard to measure what isn't reported. In areas where—and Nevada is one—where we have done a fair amount of auditing of tip income and therefore developed some experience, we find compliance runs about at the 10 to 15 percent level. I hesitate to project that any further. But based on experience of auditing actual returns, that is about the level of voluntary compliance we find.

Senator Laxalt. Doesn't that tell us that this is a serious policy problem. What you are saying to me is in terms of tip income is that 80 to 85 percent of the people receiving tips are breaking the law.

Mr. Kurtz. Yes, it is a very serious compliance problem and it should be approached from a compliance standpoint. That is, we ought to have a system that would call for reporting or withholding of tips at the employer level. As you know, there was a revenue ruling issued on this point 4 or 5 years ago which would simply have called for reporting of charged tips, which would have gone a long way toward improving compliance in the tip area, and we were prevented from implementing that revenue ruling by Congress. But these are tools that could be available that would be helpful. Absent those tools, we are left with gaining compliance solely through auditing of tax returns.

Senator Laxalt. I have a fundamental belief from the standpoint of a political scientist that if you have a law sitting out there and it isn't being complied with, you better take a look at it.

Mr. Kurtz. Senator, this goes far beyond tips. We have an awful lot of people engaged in areas where there is an opportunity for noncompliance. Certainly, we would not be willing to say that anyone who has a small retail business, or is a door-to-door salesman, or is engaged in another occupation where there is an opportunity for noncompliance should be exempt from income tax and that we should level that burden on the factory workers.

SIZE OF UNDERGROUND ECONOMY

Senator LAXALT. What do you presently estimate the amount of the underground economy to be? We have heard all kinds of figures.

Mr. KURTZ. We compiled one estimate which was completed and published late in the summer last year, which was an estimate for the tax year 1976, and in that year we estimated that unreported income on individual tax returns from legal sources to be in the area of $75 to $100 billion as against reported income in the area of $1.1 trillion. Illegal income is something else. There is an overall compliance of about 90 percent, or about 10 percent noncompliance among individuals in the legal sector.

MAHEU CASE

Senator LAXALT. Last, Mr. Chairman I would like to discuss the Bob Maheu case. As the gentlemen here know, Mr. Maheu was No. 1 man in Nevada for Mr. Hughes for a long period of time. More recently, he has been involved in an extended controversy with IRS for many, many years, to the point he and his family have been almost totally shattered by the experience. This compares, at least in my own experience, with what I saw Charlie Stein go through, the so-called uranium king. Mr. Stein came into IRS difficulty, first with a horrendous IRS over estimate of unpaid taxes and then spent years and years to attempt to settle the matter. Finally I think last year did, settle but his resources, both material and spiritual, were totally exhausted in the process. In my estimate, he was a victim of a very oppressive process. I am not so sure we are not experiencing the same in connection with Bob Maheu.

The Bob Maheu case, as you know, was the subject of extended treatment by Mr. Greenspun of the Las Vegas Sun in a series of itemized alleged abuses by the IRS affecting people in Nevada. In connection with the Maheu case I have several questions which relate to a hesitancy, if not a disinclination, to tie these darn cases up, to finally get to the point where you can sit down and have a reasonable settlement conference and decide what the numbers are and clean it up. I have been advised by Mr. Maheu and counsel that every time they get close, something happens. This is still an unresolved matter, causing tremendous difficulties not only to the taxpayer, but his family and a number of his associates.

I would like to know whether or not there is any inclination on the part of IRS to finally clean up the Maheu case?

Mr. KURTZ. Senator Laxalt, one problem is, of course, we are barred by statute, section 6103, from discussing particular taxpayers' matters and disclosing any aspects of a particular taxpayer's affairs. With appropriate waivers, we could give you a report on it.

Senator LAXALT. As to the Maheu case?

Mr. KURTZ. Yes.

Senator LAXALT. And that privilege operates in favor of the taxpayer, doesn't it?

Mr. KURTZ. That is with appropriate waiver from the taxpayer. But we can't discuss it now.

Senator LAXALT. I probably have it, but I don't have anything in writing if that is required. I would like, after consultation with him, to once again bring to your personal attention, Mr. Kurtz, the history of this case and implore those responsible to sit down with counsel for Mr. Maheu and finally get this thing cleaned up before this whole family is destroyed. I appreciate your personal intervention in terms of getting this done.

Mr. KURTZ. We can tell you, as I say with appropriate waivers, just where the case stands. I don't know anything about the case.

Senator LAXALT. I understand that.

Mr. KURTZ. We will have to find out more about it and then will report to you.

Senator LAXALT. Mr. Chairman, I think that is all I have. I thank all of you for your consideration.

Senator SCHMITT. Senator Laxalt, I think you have touched on specific examples, some of the fundamental difficulties that the IRS and the taxpayer are facing. I would be happy to work with you on the report language and any other activities that may be necessary to begin cleaning some of these issues up. Thank you for your questions.

Senator LAXALT. I thank the chairman and members of the panel.

RELATIONS WITH SMALL BUSINESSES

Senator SCHMITT. Mr. Kurtz, somewhat related to the general issue just raised by Senator Laxalt is the question of the IRS as a creditor in general, and I have had some personal experience, indirect experience, with the IRS as a creditor for small business, and they are an overwhelming creditor. Until a chapter 10 proceeding takes place, they tend to take precedence over all other creditors in a small business that is having some difficulty. In many cases they can be so overwhelming, so unforgiving, if you will, at least in the timing of the collection of tax debts to really drive small business that otherwise might succeed into the ground. Do you feel that that is a general problem or are these isolated circumstances?

Mr. KURTZ. I believe, certainly hope, they are isolated cases. The goal of the Service in debt collection, obviously, is not to drive businesses into the ground. We do have an obligation obviously to try and collect the funds that are due. We have programs to try to work with taxpayers who run into problems in the business area. Of course, most of the delinquencies among businesses arise as a result of failure to pay taxes which are withheld from employees. In those cases we have procedures in which we try to work with taxpayers and get them on a current basis, and at the same time collect taxes that are due.

Senator SCHMITT. Well, small businesses, of course, are failing as fast as they are being created, and the burden of regulation and taxation is part of the problem that a small business faces in getting started. In this one circumstance that I am most familiar with, there seemed to be a window of hope for the business for a while, but the continued pressure to pay the back taxes, where other creditors were willing to defer payment for some period of time, having confidence in the company and in the quality of the work being done, the IRS was not being tolerant and eventually chapter 10 was required and the company was dissolved.

Mr. WOLFE. Senator, I have worked very closely with the Small Business Administration, I work very closely with the American Bar Association and their Small Business Committee, I work very closely with the American Institute of CPA's, attempting to get all these organizations to work toward helping the small business person. There are several things that I have learned about small business. Their tax problems quite often are withheld wages that they have not turned over. It was not their money to begin with, it was their employees' money, and they just did not have enough money to meet payroll. So they would meet net payroll while still owing the United States an amount withheld from their employees. We try to work with these people to permit them to pay over a period of time. There comes a time, however, when they really cannot meet all these obligations. Part of it, I think, is due to undercapitalization. For the small business person, it is always difficult for them to get capital. But we do have programs, and Mr. Starkey may want to comment more as to what we do in trying to work with them.

Mr. STARKEY. Senator, we are aware we have an economic obligation to the employer and also to the employees involved. Our thrust, primarily, is to insure that current taxes are paid while we attempt to work with the businessman to pay his prior liability. As Mr. Wolfe pointed out, occasionally there comes a time when the individual employer ceases to turn over his current withholding to us. It is at that point a decision has to be made as to what route to go.

Senator SCHMITT. I realize and am sympathetic with that. But does the IRS have a program in which the prospective small business person could get a clear understanding of the kind of tax needs that they will face in the future and not go into this at least with their eyes closed?

Mr. STARKEY. Yes, at the time an individual applies for an employer identification number.

Senator SCHMITT. It ought to be before he starts his business.

Mr. STARKEY. That, of course, is the first time we have knowledge of it.

OUTREACH PROGRAM FOR SMALL BUSINESSES

Senator SCHMITT. What I am asking is there an outreach program, say through the SBA or through the chamber of commerce or some other organizations, public or private, that makes this kind of understanding readily available before somebody gets himself into problems?

Mr. STARKEY. Yes, in many districts, in conjunction with the Small Business Administration, we offer tax clinics to small business. As I started to say earlier, once we know the employer is in business by filing for an employer identification number, we offer to meet with him, go over each tax form for which the business may be liable, and provide continuing contacts if there are questions.

Senator SCHMITT. How often are you taken up on that?

Mr. STARKEY. I don't know the statistics.

Senator SCHMITT. Could you supply statistical information on that? I don't know quite how to ask the question. Is small business aware of the program, do they ask for that assistance?

Mr. STARKEY. We will see if we can get the information. I am not sure we keep statistics on it.

Senator SCHMITT. If you could supply for the record some way we could understand how often small business takes this opportunity. What we really would like to have is whether the briefing does any good or not.

OUTREACH FOR SMALL BUSINESS PEOPLE

Supply IRS outreach data for small business people, including statistics on frequency small business people take advantage of outreach efforts and indicators of success of these efforts.

Mr. KURTZ. IRS has a Small Business Tax Workshop which was first developed in June 1978 and designed to provide a 1-day educational program. The workshop deals with an overview of general business and employment tax responsibilities and benefits for all new business proprietors. Also, a more in-depth understanding of employment and business returns is available for business people who plan to prepare their own returns.

Our outreach efforts to make small business people aware of the free Small Business Tax Workshop program include the mailing of a brochure to new business people who apply for an employer identification number—approximately 1 million EINS are issued annually. News releases and announcements on Small Business Workshops are also distributed to general and specialized medias through our local district and national office outlets to promote the program. A 30-minute film explaining the Small Business program can be obtained through all IRS district offices and is available at no charge in either English or Spanish. In addition, special mailings explaining the program are made through organizations and other Government agencies such as the Small Business Administration. A special mailing is now being prepared for women's business organizations.

Through December 1979, there have been approximately 96,000 participants in 4,200 classes and the program continues to be an area of major emphasis among IRS educational efforts.

Mr. WOLFE. Senator, we also leave with each business person we do contact a package called "Your Business Tax Kit," which is a little kit which contains an explanation of the tax laws, things that he or she necessarily must do to comply, and a copy of applicable forms. So, mainly through the Small Business Administration seminars, we try to work with these people who are planning on going into business, and after they apply for a number, then we can actually contact them and give them the "Your Business Tax Kit" so they will have right in front of them everything they need to know to comply with the tax law.

Senator SCHMITT. Could you supply that?

Mr. WOLFE. Yes.

YOUR BUSINESS TAX KIT

Senator SCHMITT. Provide a copy of Your Business Tax Kit to the committee.

Mr. KURTZ. The Internal Revenue Service provides a free kit to help the new business taxpayer understand Federal tax requirements. The kit, known as Your Business Tax Kit—YBTK—contains information pertinent to a specific business. For example, publications on agricultural issues, on partnerships, on highway use tax and the like would only be included when needed. A sample kit is provided for your information.

IRS employees are responsible for providing the YBTK to small business people needing assistance. This is done when either a small business person visits an IRS office or when an IRS employee visits a small business person. In addition, IRS sends a notice to all new business people applying for an employer identification number informing them that a kit is available when it is not convenient for them to attend a small business workshop. Since 1975, approximately 200,000 kits have been distributed each year to small business people through mailings on one-on-one contacts.

[CLERK'S NOTE.—A copy of Your Business Tax Kit is in the committee files.]

COMPLIANCE STUDIES

Senator SCHMITT. Mr. Commissioner, the United States has a voluntary compliance tax system, as has been mentioned this morning. Few other nations can boast such a system—few other large nations at least. In other nations the taxes are collected either by huge tax enforcement systems or in essence are negotiated with the individual taxpayer. During the past few years we have been hearing of an increase in noncompliance with our tax law. It does seem that the underground economy is growing as the tax burden and inflation and other economic difficulties grow, and possible noncompliance of legal income is growing for the same reason. Has the IRS conducted any studies as to the cause of the increase in noncompliance with our tax laws?

Mr. KURTZ. Senator Schmitt, the one study which we have done, which was the first time that the Service attempted an overall measurement of noncompliance among individuals, was done for 1 year.

Senator SCHMITT. But that was 1976, which was a relatively good year economically. Compared to the present, it was better by a factor of five.

Mr. KURTZ. Nineteen hundred and seventy-six was picked not for that reason. It was picked because it was the most current year for which there were sufficient statistics to do the study. We are hoping to be able to do a study like it for a subsequent year, and that will, we hope, give us some information on trends. What I am saying, sir, is we do not have current information on overall compliance trends. I know there have been others outside who have estimated that tax compliance is declining. Our own position is we do not have a figure that shows that.

Senator SCHMITT. Do any of those outside studies that were done comparable and do they reflect realistically the trend?

Mr. KURTZ. We have problems with them. They were done in completely different ways and do not really address the tax problem. They deal with the size of the cash market and draw implications from that; that is, ratios of currency in circulation to demand deposits. And there is not an overall way which would give us the kind of information we need in tax administration. Our hope is that with continuing research efforts we will be able to make some observation.

Senator SCHMITT. When would you expect to have a more updated report and maybe some idea of trends?

Mr. KURTZ. Well, we have things in progress. It is very hard to predict just how long it will be until we have anything. It is not anything that we will have immediately or within the next 30 days. These are longer range efforts than that.

TAX COMPLEXITY

Senator SCHMITT. Do you have any information to think that the complexity of the tax laws and tax regulations has anything to do with noncompliance?

Mr. KURTZ. It has to do, certainly, with the difficulty of the administrative task in conveying the tax law to the people and in gaining compliance. Certainly, a simpler tax law would be easier to administer and perhaps gain more compliance. It is very difficult for me to assign a particular cause.

TAX RETURN PREPARERS

Senator SCHMITT. Do you have any information on how many taxpayers are using outside assistance to prepare their taxes?

Mr. KURTZ. Yes; last year it was something just under 50 percent, 45 percent is my recollection. We will have, within the next few weeks, figures for this year. Statistics are gathered as tax returns are filed. We sample tax returns filed to gain that information. The percentage of taxpayers using outside preparers has declined rather significantly over the past three years.

Senator SCHMITT. Is that because of inflation, do you think, and the cost of doing that?

Mr. KURTZ. No, I think it is because of a greater use of the 1040–A tax form, which is the much simpler tax form. Legislative changes that were made in recent years have permitted more people to use the 1040–A. These people are able to prepare their own returns. Also, we have done a substantial amount of work in form simplification and simplifying instructions, and we think we are seeing some payoff from that.

TAX RETURN ERRORS

Senator SCHMITT. What is the error rate in the same period of time?

Mr. KURTZ. The error rate—and these are errors on the face of the return—again has declined rather dramatically from an error rate of over 11 percent for the 1976 tax year, returns filed in 1977, to where last year the overall error rate was about 6.5 percent.

Senator SCHMITT. And are you speaking of the long form or all forms?

Mr. KURTZ. That is all forms. It is different on the two forms. It is somewhat lower on the 1040–A and a little higher on the 1040.

ESTIMATES OF ILLEGAL INCOME

Senator SCHMITT. Your estimate earlier, I believe you said $100 billion in legal income that is unreported?

Mr. KURTZ. $75 dollars to $100 billion.

Senator SCHMITT. Do you have any information from other law enforcement agencies on what might be the illegal income?

Mr. KURTZ. We did in that same report estimate unreported taxable income from certain illegal sources, namely, narcotics, gambling, and prostitution, and the figures there were $25 to $35 billion. That is not an all-inclusive figure because it does not include income from all illegal activity. We limited ourselves to those three because they were the only three areas where we felt there was sufficient information available to make even rough estimates. Let me hasten to add those are the softest parts of the estimates.

Senator SCHMITT. What agencies do you work with in order to obtain the data?

Mr. KURTZ. In all of our estimates we work and consult with, I would say, every agency in the Federal Government that had any statistics. On narcotics we obviously talked to DEA. We were a member of an interagency group that included DEA, Customs, and others, which did overall estimates of narcotics trafficking. In other fields we have talked to the FBI, local law enforcement agencies, a wide variety of sources. Our estimators and statisticians attempted as a result of this information to come up with ranges of estimates.

Senator SCHMITT. There are estimate much higher than that for those three categories.

Mr. KURTZ. Our estimate on narcotics, which is the biggest piece of that, is reconcilable with, although it is different from, the interagency task force figure. The reason the figure is different is because the interagency task force was measuring gross narcotics traffic in the United States and we were attempting to measure taxable income. There are amounts of money which were paid for base of supply from a foreign source, which may be in the gross traffic, but would not affect taxable income. So the figures are somewhat different in total, but they are measuring different things and they are reconcilable.

LEGISLATIVE RECOMMENDATIONS

Senator SCHMITT. Are you in the process of making recommendations to the Department of Treasury with regard to further Tax Code simplification?

Mr. KURTZ. Further Tax Code simplification, the primary responsibility for legislative recommendations on that is in the Treasury, the Office of the Assistant Secretary for Tax Policy.

Senator SCHMITT. They don't ask you for recommendations?

Mr. KURTZ. We do make recommendations on a continuing basis and try to identify those areas where there may be higher rates or where we are getting large numbers of questions and things of that kind, and we are continually submitting that information and in many cases recommendations. In terms of fashioning a legislative proposal and overall submission, that is done at Treasury, although we do consult.

Senator SCHMITT. Do you expect any recommendations to go forward based on the tip problem that we discussed earlier?

Mr. KURTZ. Legislative recommendations, I don't know. It is an area that we continue to look at.

Senator SCHMITT. Is there a formal mechanism within Treasury by which the Assistant Secretary works with you and your people?

Mr. KURTZ. Yes.

Senator SCHMITT. Is that formal?

Mr. KURTZ. Yes, on a continuing basis.

Senator SCHMITT. Is it formalized by some intra-agency group, or how does that happen? What is the process by which you come up with a great idea, he hears about it and we hear about it?

Mr. KURTZ. It happens in a number of different ways. We have an Assistant Commissioner for Planning and Research. One of the divisions under him is one that deals with legislative activities. They develop proposals in consultation with others in the Service. A memorandum will come forward, go from me to the Assistant Secretary. That is a very formal process. Don Lubick, who is Assistant Secretary for Tax Policy, and our people have lunch together once a week to go over agenda items. And it is a continuing consultation, both formal and informal.

Senator SCHMITT. How many formal recommendations do you think you send forward under your signature in a year's time?

Mr. KURTZ. I would have to look and see. If I had to guess, I would say a dozen or so.

Senator SCHMITT. Would it be possible for us to get the last 12 months' recommendations you have sent forward just to see the kind of interactions?

Mr. KURTZ. Yes.

[The information follows:]

Attachment I

COMMENTS ON JOINT COMMITTEE STAFF PROPOSALS

FOR AMENDMENTS TO SUBTITLE F OF THE INTERNAL REVENUE CODE

INTERNAL REVENUE SERVICE

Comments on Joint Committee Staff Proposals for Amendments to Subtitle F of the Internal Revenue Code

1. Returns for Transferors to Exempt Organizations (Section 6050) - This section would be repealed.

The IRS supports this proposal. It was recommended to the Assistant Secretary for Tax Policy in September 1977 and included in H.R. 12578 (95th Congress).

2. Simplification of Private Foundation Return and Reporting Requirements (section 6056 and 6033) - Repeal section 6056 and modify section 6033 so that (a) information now shown on the §6056 return (Form 990-AR) will be shown on the regular Form 990-PF, (b) information concerning certain payments to indigents need not be shown, and (c) the information reporting requirements would apply to nonexempt wholly charitable trusts described in section 4947(a)(1).

The IRS supports this proposal. It was recommended to the Assistant Secretary for Tax Policy in September 1977 and included in H.R. 12578 (95th Congress).

We would, however, like to see the proposal expanded to require that split interest trusts (section 4947(a)(2)) also be subject to the same reporting requirements as other organizations affected by the amendment. By doing this, Form 5227 (Returns of Nonexempt Charitable or Split-Interest Trust Treated as a Private Foundation) could be eliminated, thereby reducing paperwork of the trusts.

3. Payment of Interest on Wrongful Levies (section 6343) - Provide for the payment of interest on wrongful levies.

The IRS supports this proposal. It was submitted to the Assistant Secretary for Tax Policy in September 1977 and was included in H.R. 12578 (95th Congress). The proposal is included in the attached list of IRS recommendations.

4. Addition to Tax in Case of Jeopardy (section 6658) - Repeal this section.

We concur in the recommendation. Changes in termination assessment provisions in the Tax Reform Act of 1976 eliminate need for the penalty.

5. Stock Option Information returns (section 6039) - Repeal section 6039 which requires the filing of information returns concerning the exercise of certain stock options.

We see no need for the information document to be filed with the IRS, primarily because there is no taxable transaction involved at the time the option is exercised and reported on by the corporation transferring stock. We do, however, believe that the taxpayer exercising a qualified or restricted stock option should be provided with the information required by section 6039. It is needed to establish the basis for reporting gain or loss when the stock acquired is later disposed of. We, therefore, recommend that the section 6039 requirement for furnishing information to the person who exercises an option be retained.

6. Negligence Penalty (section 6653(a)) - Impose the addition to tax for negligence on the amount of the item which is claimed, excluded, etc., in negligence or intentional disregard of rules and regulations rather than on the total underpayment of tax. Also, raise the rate of the penalty from 5 to 10 or 15 percent.

The Service does not concur in either of these proposals. Adoption of the proposal to limit the penalty to the "negligent" item, would hinder the administration of the tax law. Specifically:

(a) Despite the proposed rate increase from 5 to 10 percent, some taxpayers may perceive the "negligent item" approach as decreasing the risk factor for being negligent.

(b) It would be much more difficult for the Service (and require much more manpower) to establish negligence on an item by item basis. Under current rules negligence on one item establishes negligence for the entire underpayment. This seems logical and reasonable.

(c) Amending the negligence penalty as proposed may cause the penalty, to be greater than the civil fraud penalty, which seems undesirable. For example, it appears that the proposal would impose a penalty on an item even though, there is not net underpayment of tax because of offsetting errors on the return.

We are attaching an alternative recommendation for dealing with tax administration problems involving negligence.

7. and 8. Individual and Corporate Estimated Income Tax (Sections 6015, 6654, and 6655) - Raise the $100 *de minimis* exception to $250 for individuals and the $40 exception to $100 for corporations. Provide that individual estimated tax payments are to include minimum taxes and that corporation payments are to include investment credit recaptures and minimum taxes.

We have no problems with these proposals, but have included additional recommendations concerning estimated taxes. (See recommendation number 18 , page 55 , of the attachment).

9. Time for Filing Gift Tax Return (section 6075(b)) - Amend section 6075 to provide that the fourth quarter gift tax return due date will be April 15th rather than February 15.

We see no benefit to be derived from this proposal and recommend against its adoption.

10. Preparer Facsimile Signature - Section 6061 and other pertinent sections would be changed to permit, under certain prescribed conditions, a return preparer to use a stamp or facsimile signature for signing a return.

We have no objections to this proposal.

11. Community Income of Spouses Living Apart - If spouses have lived apart for an entire year (but are not legally separated or divorced)

and do not file a joint return, community property rules for the treatment of earned income would be overridden (e.g., salary income would be taxable to the spouse who earned it even if technically community income).

We support the tax relief measures provided by this proposal and recommend its enactment. We note, however, that the proposal only deals with the treatment of earned income. To fully resolve the problem, legislation should also be developed to provide similar treatment of unearned community property income. The IRS has a legislative proposal concerning this aspect of the problem under consideration, but because of several unresolved tax administration problems we are not yet in a position to present a final proposal.

12. Disclosure to State Tax Officials (section 6103) - Permit Chapter 32 Manufacturers Excise Taxes) information to be disclosed to state tax officials.

We have no problems with this proposal.

INTERNAL REVENUE SERVICE -- LEGISLATIVE PROPOSAL

1. LIMIT CREDIT FOR THE ELDERLY TO TAXPAYERS OVER 65

Summary

To achieve simplification and equity, repeal provisions of the credit for the elderly that allow taxpayers under age 65 to claim the credit.

Present Law

Generally, the credit for the elderly may be claimed only by taxpayers age 65 or older. However, taxpayers under age 65 who have public retirement system income may also claim the credit.

For taxpayers over 65, the credit is 15 percent of a base amount (either $2,500, $3,750, or $1,875 depending on the taxpayer's filing status and, if married, the age of the spouse). The base amount is reduced by certain non-taxable pensions (Social Security and Railroad Retirement) and one-half of the taxpayer's adjusted gross income in excess of $7,500 in the case of a single individual, $10,000 in the case of a joint return, and $5,000 in the case of a married individual filing a separate return. Computation of the credit for taxpayers 65 or over is made on Schedule R.

For taxpayers under 65, the credit is 15 percent of the lesser of (A) the taxpayer's public retirement system income, or (B) a base amount ($2,500, $3,750, or $1,875 depending on the taxpayer's filing status) reduced by certain non-taxable pensions and by an earned income phaseout amount. The phaseout amount varies depending on the taxpayer's age and earned income, e.g., for taxpayers under 62, the phaseout is a dollar-for-dollar reduction for earned income in excess of $900. If the taxpayer files a joint return, the base amount ($3,750) is divided between the spouses (not more than $2,500 to either spouse), and each spouse computes a separate limitation on his or her retirement income that can be used to compute the credit. Computation of the credit for taxpayers under age 65 is made on Schedule RP.

Married taxpayers filing a joint return where one spouse is 65 or older and the other is under 65 and has public retirement system income can elect to compute their credit for the elderly under the provisions applicable to taxpayers under 65 (Schedule RP) or those applicable to taxpayers 65 or older (Schedule R).

Recommendation

Repeal provisions of the credit for the elderly that allow taxpayers under age 65 to claim the credit.

Reasons for Change

The provisions of the credit for the elderly applicable to taxpayers under age 65 are very complicated. Schedule RP and instructions take up almost two and one-third pages (Schedule R and instructions take up about a page). In order to compute their credit, taxpayers under 65 must be able to determine how much of their income is EARNED income (as opposed to unearned) and how much is RETIREMENT income. The distinctions between earned, unearned, and retirement income are very subtle and often difficult for the average taxpayer to understand. For example, disability annuity payments from a public retirement fund are EARNED income until the employee reaches minimum retirement age (or age 65 if earlier). After minimum retirement age, the payments will be RETIREMENT income unless the employee is eligible to exclude all or a portion of such payments under the disability income exclusion provisions.

Because of the complexity of the provisions applicable to taxpayers under 65, there is a very high error rate in the computation of the credit for these taxpayers. Although no data are available for recent years, TCMP data from 1973 on the Retirement Income Credit (RIC) can be used to make a rough approximation -- the present credit for the elderly for taxpayers under age 65 is essentially the same as the 1973 RIC for taxpayers both over and under 65. This 1973 TCMP data suggests that the error rate for the computation of the credit by taxpayers under 65 is in excess of 20 percent (of the 803,565 who claimed the RIC in 1973, 186,447 had line errors).

In many situations, the credit computed under the rules applicable to taxpayers under age 65 (Schedule RP) will be greater than the credit computed under the rules applicable to taxpayers 65 or older (Schedule R). Consequently, taxpayers under 65 are often able to get a greater credit for the elderly than similarly situated taxpayers aged 65 or older. This result is unfair to taxpayers age 65 and older. Moreover, this result is difficult to logically explain and creates a poor impression of the equity of the tax law.

The credit provisions applicable to taxpayers under 65 provide an unjustified tax subsidy to many public retirees. These provisions were originally designed to place public system retirees who do not receive Social Security on an equal footing with Social Security recipients whose annuity payments are non-taxable -- the rationale being that the credit would offset the tax benefits obtained by Social Security recipients because of the non-taxability of their retirement payments. Except in cases of permanent and total disability, Social Security retirement benefits are available only to retirees aged 62 or over. Therefore, the credit for public system retirees under 65 should be limited to taxpayers aged 62 or over. To the extent the credit for the elderly is available to taxpayers under age 62, it is inequitable and unjustified.

The proposal will greatly simplify the provisions of credit for the elderly. It will eliminate the need for many taxpayers to distinguish between earned, unearned, and retirement income (some taxpayers will still be required to make these distinctions for purposes of other provisions of the tax laws, e.g., earned income credit, maxi-tax, etc.). The proposal will also eliminate many of the equity problems described above. Finally, the proposal will eliminate the problem of taxpayers under age 65 obtaining a greater credit than similarily situated taxpayers age 65 or older.

An argument can be made that the proposal is inequitable insofar as it denies the credit to certain public retirees aged 62-64 (presumably, they are in need of a credit to place them on equal footing with Social Security-retirees whose benefits are non-taxable). However, it is felt that the simplification value and other merits of the proposal substantially outweigh the possible inequity that may result from denying these taxpayers any credit.

Data from Statistics of Income and the Taxpayer Usage Study indicate that in 1976 the credit for the elderly was claimed on 1.01 million returns, of which .59 million computed the credit under the rules applicable to taxpayers over 65 (Schedule R) and .42 million computed the credit under the rules applicable to taxpayers under age 65 (Schedule RP). Based on this data it is estimated that the proposal will preclude about .38 million taxpayers under age 65 from claiming the credit for the elderly (it is estimated that about 10 percent of those now filing Schedule RP are also eligible to claim a credit filing Schedule R).

WITHHOLDING POSSESSION INCOME TAX ON COMPENSATION OF UNITED STATES EMPLOYEES

Summary

Amend the law permitting Federal withholding of State income taxes to include the following possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. In addition, a conforming Code change would be enacted.

Present Law

Section 5517 of Title 5, United States Code, requires the Secretary of the Treasury, on request of a State, to enter into an agreement to withhold State income taxes from the wages of Federal employees. Military personnel may also be subject to such withholding for their State of residence. This law was enacted to permit the payment of tax on a pay-as-you-go basis, thereby relieving individuals of having to make estimated tax payments or lump sum payments when filing returns. Legislative history and Treasury interpretations indicate that the existing language of section 5517(c), which permits such agreements with a "territory or possession," refers only to Alaska and Hawaii, which were not States when this law was enacted (1952). Thus, a withholding agreement cannot be entered into with American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

Section 3401(a)(8) of the Internal Revenue Code does, however, require withholding of Federal income tax from remuneration paid to employees of the United States for services performed in the possessions even though the income tax liability of these civilian employees is to the possession where services are regularly performed. Employees in Puerto Rico and American Samoa must, therefore, file a Federal return to obtain a refund of the tax withheld. They then pay their possession income tax. Employees in Guam, the Northern Mariana Islands, and the Virgin Islands file their returns with their respective possession. The tax revenue is transmitted at the government level as authorized by 48 U.S.C. 1421(h) and 48 U.S.C. 1642 respectively.

In contrast, employees in the private sector are exempt from Federal withholding if subject to possession withholding.

Recommendations

1. Amend 5 U.S.C. 5517(c) to provide that the phrase "territory or possession" includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and any other U.S. territory or possession which establishes an income tax qualifying for a credit against U.S. income tax.

2. Amend section 3401(a)(8) of the Code by adding a new subsection exempting employees of the United States from Federal withholding if (a) their regular place of employment is a possession, (b) the possession has an agreement with the Secretary under 5 U.S.C. 5517 for the withholding of possession income tax, and (c) the employee tax liability to the United States in respect to the remuneration, may reasonably be expected to be satisfied by a credit for taxes paid to a possession. This would not apply to compensation paid members of the Armed Forces having no possession tax liability by reason of the Soldiers and Sailors Civil Relief Act.

Reasons for Change

The proposed change would ease a significant burden faced by civilian employees of the United States working in possessions. In addition, it would benefit the possessions by providing more prompt receipt of their individual income tax revenue during the year. There would be no loss of revenue to the United States. The administrative burden to the United States in accomplishing this goal would be roughly equivalent to the burden currently assumed by private employers and should, therefore, be assumed for the benefit of the government's own possessions employees.

Each of these four possessions levies an income tax on their residents in amounts equal to or greater than the Federal income tax. Employees in the private sector are subject to withholding of possession income tax on their salaries. While the situation is slightly different in each possession, all four would benefit from identical treatment in this proposal.

There are some 8,000 civilian employees in Puerto Rico who have Federal income tax withheld from their wages. Their tax liability on these earnings is to Puerto Rico. Consequently, they file a Federal return to obtain a full refund of the withheld tax, which is then used to partially satisfy their Puerto Rican tax liability. The tax due Puerto Rico is higher than the Federal amount because of a surtax and a tax on cost-of-living allowances. Many employees are thus faced with the need to make lump sum payments equaling 10 to 20 percent of their total tax liability.

There are over 4,000 civilian employees of the United States in Guam who have Federal income tax withheld from their wages. The individuals receive credit for this tax on their income tax returns filed with Guam as provided for in section 935 of the Code. The Federal tax withheld from these wages is transmitted to Guam quarterly by the United States under the authority of section 30 of the Organic Act of Guam (48 U.S.C. 1421(h)). This proposed change would benefit Guam by providing for more current receipt of tax revenues through the tax deposit system.

P.L. 94-241, establishing the Commonwealth of the Northern Mariana Islands, provides for a territorial income tax mirroring the Code in the same manner as Guam. This is to be effective January 1, 1979. Thus, the same situation will exist in the Northern Marianas as in Guam excepting that there will be far fewer Federal employees involved.

Approximately 350 civilians are employed by the United States in the Virgin Islands. Some agencies are withholding for Virgin Islands income tax purposes while others are withholding for Federal tax purposes. This inconsistency is apparently the result of differing interpretations of a conflict between 48 U.S.C. 1642 and 26 U.S.C. 3401(a)(8). In either case, the employee files an income tax return with the Virgin Islands. If there is Federal withholding, a copy of the return and Form W-2 are transmitted to the Service. A determination is then made as to how much is owing the Virgin Islands as tax, and how much of a refund is due the employee. The Service then issues a check to each party. Under the proposal, the Virgin Islands would receive its tax revenue on a more current basis and some employee returns would no longer be involved in a processing step that delays their refunds.

In American Samoa, there is also some confusion as to whether withholding is permitted for American Samoan taxes. For an employee who has Federal income tax withheld, the filing situation is the same as in Puerto Rico. However, the Samoan tax rates are identical to U.S. rates, and an additional lump sum payment is not normally needed. If the refund is delayed, however, the employee would be liable for interest to Samoa.

This proposal has been revised to include changes made by P.L. 94-455.

Proposed Effective Date

The effective date of this proposal should be the date of enactment.

DENY CAPITAL GAIN TREATMENT TO GAIN FROM THE SALE OF DEPLETABLE PROPERTY TO A SPOUSE OR CONTROLLED CORPORATION

Summary

Treat gain from the sale or exchange of depletable property as ordinary income if the sale or exchange is between a husband and wife, an individual and a controlled corporation, or two or more controlled corporations.

Present law

Section 1239 provides that gain from the sale or exchange of property between a husband and wife, an individual and a controlled corporation, or two or more controlled corporations will be treated as ordinary income if the property is, in the hands of the transferee, subject to an allowance for depreciation as provided in section 167.

Recommendation

Amend section 1239 to make the section applicable to the sale or exchange of depletable property.

Reasons for change

Under present law taxpayers owning depletable property in which they have a low basis can derive significant tax benefits from selling the property to a spouse or controlled corporation. The spouse or controlled corporation will be able to utilize the stepped up basis resulting from sale to take a much greater cost depletion allowance than the taxpayer would have been entitled to had the property not been sold. In addition, since section 1239 is not applicable to depletable property, gain realized by the taxpayer from the sale will be treated as capital gain. Thus, while retaining control of the depletable property, the taxpayer can increase the cost depletion allowance in exchange for the accelerated recognition of the property's appreciation at the capital gain tax rate.

If the law is changed, as recommended, gain from the sale of depletable property to a spouse or controlled corporation will be treated as ordinary income. This should be sufficient to curtail future sales of this nature that are entered into primarily for tax reasons. In any event, treating the gain as ordinary income, as opposed to capital gain, should substantially reduce the tax benefits that can be derived from these sales.

ALLOW SELF-EMPLOYED TAXPAYERS WHO INCUR A LOSS FOR THE YEAR TO CLAIM CHILD CARE CREDIT

Summary

Amend section 44A(e) to allow self-employed taxpayers with little or no income from self-employment to claim the child care credit.

Present Law

Section 44A allows taxpayers, who incur child care expenses in order to be gainfully employed, a tax credit equal to 20 percent of their qualifying child care expenses. The maximum amount of qualifying child care expenses that can be taken into account in computing the credit is limited to the lesser of $2,000 ($4,000 if more than one qualifying child) or the taxpayer's earned income for the taxable year. In the case of married taxpayers, the limitation is based on the earned income of the spouse with the least amount of earned income for the year.

Section 44A(e)(2) provides a special rule for situations where the taxpayer's spouse is a student or incapable of caring for himself/herself. Under this special rule, for each month the spouse is a full time student or incapable of caring for himself/herself, the spouse is deemed to be gainfully employed and to have earned income of not less than $166 ($333 if more than one qualifying child).

Recommendation

Amend section 44A(e) to provide a special rule for self-employed taxpayers. Under this new special rule, for each month the taxpayer is engaged full-time in self-employment activities for a profit, he/she will be deemed to have earned income of not less than $166 ($333 if more than one qualifying child).

Reasons for Change

Under current law, taxpayers engaged in self-employment activities from which they realize little or no income are denied the full benefits of the child care credit. For example, consider the case where the taxpayer's business operates at a loss for the year. Unless the taxpayer has earned income from another source, he/she will not be entitled to any child care credit. This will result even though the taxpayer worked full time and incurred substantial child care expenses in order to maintain the business.

If the taxpayer in the above example is single, the present earned income limitation on the child care credit is unlikely to be of any significance — the taxpayer will not have any income tax liability to apply the credit against. However, if this taxpayer is married and his/her spouse has earned income, the present limitation results in a harsh inequity.

Prior to the Tax Reform Act of 1976 there was no earned income limitation, but both spouses had to be employed full-time in order to qualify for the credit (then a deduction). Congress felt that this full-time employment test was too restrictive and that its purpose -- to prevent the credit/deduction from being claimed where one spouse works only nominally -- could be accomplished by an alternative rule which limited the allowable expenses to the earnings of the spouse with the smaller earnings. However, in a situation like that described in the above example, the alternative rule is even more restrictive than the prior full-time employment test.

Present law contains a special rule which allows married taxpayers to claim the credit where one spouse has little or no earned income because he/she is a full-time student or disabled (section 44A(e)(2)). The rationale for the special rule, as stated in the Joint Committee explanation (H.R. 10612, 94th Congress, P.L. 94-455, December 29, 1976, page 12), is that the student or disabled spouse cannot be reasonably expected to provide child care to enable the other spouse to work, and in these circumstances the child care expenses are, in fact, necessary for the other spouse to be gainfully employed.

A spouse engaged full-time in self-employment activities cannot reasonably be expected to provide child care to enable the other spouse to work. Therefore, based on the rationale of the Joint Committee, the present rule ought to be expanded to cover a full-time, self-employed spouse.

Under the proposal, individuals engaged full time in self-employment activities for a profit are deemed to have a minimum amount of earned income for each month of their self-employment irrespective of their actual earned income for the month. This will eliminate the inequity in present law that precludes full-time, self-employed individuals with no self-employment income from claiming a child care credit.

It should be noted that the proposal goes beyond merely expanding the present special rule to cover full-time, self-employed spouses. Under the proposal an unmarried self-employed taxpayer will be deemed to have earned income on which a child care credit could be claimed.

CLARIFICATION OF 10-YEAR RULE FOR INSTALLMENT PAYMENTS OF ALIMONY AND SEPARATE MAINTENANCE

Summary

Amend section 71 to provide that the beginning of the more than 10-year period which qualifies installment payments of a principal sum as "periodic payments" be defined as the date of the first scheduled installment payment.

Present Law

Under section 71(a), the gross income of a spouse divorced or legally separated must include certain "periodic payments" received from the husband or wife under a decree. Section 71(c)(2) provides that if, under the terms of the decree, instrument or agreement, the principal sum is to be paid over a period ending more than ten years from the date of such decree, instrument, or agreement, it is to be treated as "periodic."

Recommendation

Amend section 71(c)(2) to provide that the beginning of the more than 10-year period which qualifies installment payments of a principal sum as "periodic payments" be defined as the date of the first scheduled installment payment under the decree, instrument or agreement (irrespective of whether the parties are legally separated at such time or whether the written agreement is enforceable in a court of law).

Reasons for Change

There has been considerable litigation concerning when the 10-year period starts to run. Cases have been litigated to determine whether the more than 10-year period begins on the date of the initial separation or divorce agreement, or, of a later divorce decree, when both exist. A variant issue sometimes litigated, has been to determine the beginning of the 10-year period when a later decree specifies the principal sum to be paid but the earlier separation agreement does not (even though a principal sum payment may have been intended to be included in the original agreement).

Because of the confusion in interpreting section 71, and because of the variations in State divorce laws, it is possible for husband and wife to take their cases into separate courts and get favorable but divergent results. To clarify this confusion in the law, it is recom-

mended that the beginning date for the more than 10-year period be specified as the date of the first scheduled installment payment.

2. REPLACE MAINTENANCE OF HOUSEHOLD TEST IN SECTION 44A WITH REQUIREMENT THAT THE QUALIFYING CHILD HAVE THE SAME PRINCIPAL ABODE AS THE TAXPAYER

Summary

Replace the maintenance of a household requirement in section 44A with the requirement that the qualifying child have the same principal place of abode as the taxpayer.

Present Law

In order to qualify for the child care credit, section 44A(a) requires that the taxpayer maintain a household which includes as a member one or more qualifying individuals. Section 44A(c)(1) defines the term "qualifying individual" as (A) the taxpayer's dependent child who is under age 15, (B) the taxpayer's dependent who is physically or mentally incapable of caring for himself/herself, or (C) the taxpayer's spouse who is mentally or physically incapable of caring for himself/herself. Section 44A(f)(1) provides that a taxpayer shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by the taxpayer.

Recommendation

Amend section 44A(a) to replace the maintenance of a household requirement with the requirement that the qualifying individual's principal place of abode for the taxable year be the same as the taxpayer's.

Reasons for Change

The maintenance of a household test is somewhat complicated and confusing for the average taxpayer. Moreover, the test is a factual one which often places a difficult recordkeeping and tracing burden on the taxpayer. Questionable maintenance of household determinations generally involve lower-income taxpayers who are the least able to understand the complexities of the test or comply with its recordkeeping and tracing burdens.

The first step in the maintenance of a household test is to determine the total cost of maintaining the taxpayer's household. This requires a knowledge of what items and expenditures are considered part of the cost of maintaining a household. For example, one would have to know that medical and clothing expenditures are not part of the cost of maintaining a household.

The second step is to determine whether the taxpayer has furnished over half the cost of those items which make up the maintenance of a household basket. This can be very difficult when the taxpayer is receiving welfare for a child or child support payments from a divorced spouse (expenditures from these sources are generally viewed as being provided by one other than the taxpayer). Most often monies from welfare and child support are commingled with the taxpayer's earnings, and it may be impossible to determine whether the taxpayer's expenditure for household items came from his/her earnings or from these other sources. (Note: The proposal to treat welfare provided on behalf of a child as furnished by the taxpayer for purposes of the support and maintenance of a household tests would eliminate the present difficulties caused by the payment of welfare.)

By replacing the maintenance of a household requirement with a residency test for the qualifying individual, the proposal will greatly simplify the determination of whether a taxpayer qualifies for the child care credit.

3. REPEAL THE DEATH BENEFIT EXCLUSION

Summary

Repeal the death benefit exclusion provided in section 101(b).

Present Law

Section 101(b) excludes from gross income up to $5,000 of death benefits paid by (or on behalf of) the decedent's employer because of the decedent's death. The exclusion is not applicable to amounts that the decedent had a nonforfeitable right to receive while living, however, an exception is made for certain lump sum distributions from a qualified stock bonus, pension, or profit sharing trust. In addition, the exclusion is not applicable to amounts received under a joint and survivor annuity contract where the decedent was the primary annuitant and the annuity starting date occurred before he/she died.

Recommendation

Repeal section 101(b).

Reasons for Change

Computation of the amount of the death benefit exclusion can be very complicated as indicated by the following:

(1) The $5,000 maximum exclusion applies to all benefits paid on behalf of a deceased employee. If there are multiple beneficiaries, the $5,000 maximum exclusion must be prorated. Thus, in order to determine the maximum exclusion for a beneficiary, one would have to have knowledge of all other death benefits paid on behalf of a deceased employee including those paid from another source or by another employer.

(2) In the case of annuities, the exclusion for any beneficiary is limited to the present value (as of the decedent's death) of the annuity payable to the beneficiary. Few beneficiaries have sufficient knowledge of the discount rules to enable them to compute present value.

(3) In the case of payments to a survivor beneficiary under a joint and survivor annuity contract, there is no death benefit exclusion if the decedent's annuity starting date had occurred prior to his/her death - the annuity starting date is the date on which the annuitant begins recovering his/her contributions. The rules for determining the annuity starting date are somewhat complicated and often depend on factors unknown to the beneficiary or annuity payer. For example, consider the situation where the decedent retired under an employer's disability plan. If the decedent was totally and permanently disabled at the time of retirement, the annuity starting date is the date on which the decedent reaches the earlier of age 65 or mandatory retirement age. However, if the decedent made an irrevocable election not to claim the disability income exclusion, the annuity starting date is the first day of the taxable year for which the election is applicable. If the decedent was not totally and permanently disabled upon retirement, the annuity starting date is the date on which the decedent attains the earlier of minimum retirement age or age 65.

As a result of these complexities, annuity payers and recipients are often unable to correctly compute the death benefit exclusion. A National Office survey of 38 annuity payers (making payments to some 1.7 million annuitants) indicates that over 40 percent of the annuity recipients were not furnished information as to the taxable portion of their annuity. The most often cited reason for not providing this information was the inability of the payer to determine the death benefit exclusion.

By repealing the death benefit exclusion, the proposal will eliminate the above complexities. The result will be considerable simplification in the rules for determining the taxable amount of any payments to a decedent's beneficiaries. Repeal of the death benefit exclsuion will also enable annuity payers to provide an increased number of annuity recipients with the taxable portion of their annuity payments. This will result in savings for both the Service and annuity recipients. The Service will also realize savings from the simplification of its instructional material, taxpayer publications, and audit program.

4. REPLACE DISABILITY INCOME EXCLUSION WITH AN ADDITIONAL PERSONAL EXEMPTION FOR PERMANENT AND TOTAL DISABILITY

Summary

Repeal the disability income exclusion provisions and allow taxpayers under age 65 an additional personal exemption for permanent and total disability.

Present Law

Section 105(d) allows an employee under age 65 who retired because of permanent and total disability to exclude from gross income up to $100 a week of amounts received in lieu of wages for periods the employee was absent from work on account of the disability. The exclusion is subject to a phase-out rule which reduces the maximum amount otherwise excludable by adjusted gross income (including all disability pay) in excess of $15,000. Married taxpayers must file a joint return in order to claim the exclusion.

Section 151(c) provides an additional personal exemption of $1,000 for taxpayer's who have attained age 65 before the close of his/her taxable year.

Recommendation

Repeal section 105(d). Amend section 151(c) to allow taxpayers under age 65 an additional personal exemption for permanent and total disability.

Reasons for Change

Under present law, the disability income exclusion is applicable only to amounts received pursuant to a wage continuation plan maintained by the disabled retiree's employer. If the employer had no wage continuation plan or if the retiree was self-employed, there is no exclusion.

There is no justification for having a tax subsidy for permanent and total disability dependent on whether the taxpayer was an employee and whether his/her employer maintained a wage continuation plan. Disabled taxpayers who receive no wage continuation benefits are the ones most in need of a tax subsidy. Moreover, permanent and total disability is a physical condition similar to blindness and agedness. All of these conditions cause affected taxpayers to incur additional expenses, thus, decreasing their ability to pay income taxes. Like the tax subsidy for the blind and the aged, the subsidy for permanent and total disability should be provided regardless of whether the taxpayer is receiving monies pursuant to an employer's wage continuation plan.

The present disability income exclusion ceases when the taxpayer attains the earlier of age 65 or mandatory retirement age -- after mandatory retirement age the employee is no longer considered absent from work because of the disability. Thus, soon after reaching this cutoff age, most taxpayers presently claiming the exclusion will experience a large increase in their Federal income liability. An increase in tax liability based solely on attaining a certain age is illogical. Moreover, it is inconsistent with the personal exemption and credit for the elderly provisions which, generally, grant greater tax benefits to taxpayers as they get older.

The present disability income exclusion is rather complicated for the average taxpayer. Form 2440 for 1978 provides a 7-step computation and a page of instructions for use in determining the exclusion. Many of the rules for determining a taxpayer's disability income exclusion are so complex that they cannot be explained simply. For example, the instructions for Form 2440, Publication 17, and Publication 522 all state that the maximum disability income exclusion (for an individual) is $5,200. This is not an accurate statement. The exclusion is allowed for the taxable year in which the disability pay would otherwise be included in income. Thus, if for some reason disability payments were delayed or accelerated so that a taxpayer received 54 weeks of disability in one year, the maximum exclusion for that taxpayer would be $5,400. In fact, most disabled taxpayers receive their disability payments monthly and are thus eligible for a maximum exclusion of $5,220 (1 year = 52 week and 1 day) and $5,240 in a leap year.

The complexity of the present disability income provisions causes taxpayers to make an inordinate number of errors in computing their exclusions. TCMP data indicate that 38 percent of those who claimed a sick pay exclusion in 1973 computed it incorrectly (this error rate does not take into account the 317,000 taxpayers eligible for the exclusion who didn't claim it). Although no data are available for later years, it is expected that the recent amendments to section 105(d) will result in an increased error rate.

The present rules relating to a disabled retiree's recovery of his/her contributions to the employer's wage continuation plan are extremely complicated and make little sense. Under present law, the timing for recovery depends on a number of factors including the permanent and total disability of the employee, whether the employee retired prior to 1977, when the employee reaches minimum or mandatory retirement age, and whether the employee had made an irrevocable election not to claim the disability income exclusion in the future.

The proposal will make the tax subsidy for permanent and total disability available to all taxpayers. The taxpayer's income and whether he/she is being paid pursuant to a wage continuation plan will have no bearing on the subsidy. Under the proposal, the subsidy for being permanently and totally disabled will not terminate at 65 or mandatory retirement age. Thus, the proposal will eliminate the increased tax liability that certain disabled taxpayers now experience when they reach 65 (or mandatory retirement age) and are no longer entitled to the present exclusion. The proposal will eliminate the present complicated computation of the disability income exclusion and the resulting error rate. Finally, the proposal will allow the rules for the recovery of the employee's contributions to be greatly simplified -- recovery under the applicable annuity rule will begin when the employee retires.

The proposal will substantially reduce the tax subsidy for those who qualify for the present disability income exclusion. However, the proposal will make the subsidy for permanent and total disability available to a much larger number of taxpayers and for a longer period of time.

The proposal will eliminate the need for Form 2440 (and instructions), Publication 522, and Chapter 14 of Your Federal Income Tax (Publication 17). The proposal will also result in a reduction of the instructions on Schedule E and in the 1040 package.

Taxpayer Usage Study data for 1977 indicate that about 350,000 taxpayers claim the disability income exclusion. Presently, taxpayers claiming the exclusion are precluded from using Form 1040A. If the disability income exclusion is repealed, many of these 350,000 taxpayers will be able to use the short form (after they have recovered their contributions).

There are presently about 2.9 million taxpayers under age 65 classified as totally and permanently disabled for Social Security disability insurance purposes. Each receives about $3,300 a year in nontaxable disability insurance benefits. The 1979 tax expenditure for excluding these benefits is $615 million. Assuming this tax expenditure represents a reasonable estimate of the cost of excluding disability insurance payments, granting these 2.9 million disabled taxpayers an additional $1,000 exemption should cost about $185 million:

$$\frac{\$1,000}{\$3,300} = \frac{X}{\$615 \text{ million}}$$

$$X = \$185 \text{ million}$$

There are no data available, as far as we know, as to the number of permanently and totally disabled taxpayers under age 65 not covered by Social Security disability insurance or the cost of providing them with an additional personal exemption. However, the revenues generated by repealing the disability income exclusion should substantially offset (if not exceed) the cost of providing an additional exemption to those disabled taxpayers not covered by Social Security.

5. MODIFY QUALIFICATIONS FOR DEPENDENCY EXEMPTION

Summary

Raise the limitation on the gross income of an individual who can be claimed as a dependent from $1,000 to $3,300, and eliminate the present exception to the limitation for a child of the taxpayer who is under age 19 or a full-time student.

Present Law

Section 151(e)(1), as amended by the Revenue Act of 1978, allows the taxpayer an exemption of $1,000 for each dependent (as defined in section 152) —

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $1,000, or

(B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins or (ii) is a student.

Recommendation

Amend section 151(e)(1) to raise the limitation on the gross income of an individual who can be claimed as a dependent from $1,000 to $3,300, and eliminate the exception to the limitation for a child of the taxpayer under age 19 or a student.

Reasons for Change

In order to claim a dependency exemption for an individual, the taxpayer must provide over half the support of the individual. Moreover, the individual must be related to the taxpayer (or reside with him/her for the taxable year) and have gross income of less than $1,000. An exception to the gross income limitation of $1,000 is provided if the individual is a "child of the taxpayer" and is under 19 or a full-time student. A "child of the taxpayer" includes a stepchild, an adopted child, and a foster child.

Present law precludes many taxpayers from claiming dependency exemptions for individuals whom they support. For example, consider the situation where a taxpayer contributes $4,400 toward the support of his/her parent who has $1,100 in gross income for the taxable year. Although this taxpayer may be providing as much as 80 percent of the parent's support, the present gross income limitation would preclude the taxpayer from claiming a dependency deduction for the parent. The proposal would allow the parent to be claimed as a dependent as long as his/her gross income did not exceed $3,300 (assuming, of course, the taxpayer continues to furnish over half of the parent's support).

In many cases, it is often difficult for the taxpayer to determine whether a potential dependent has met the gross income limitation. Single persons are not required to file a return unless they have gross income in excess of $3,300 (or unearned income in excess of $1,000 and are claimed as a dependent). By making the gross income limitation correspond to the filing threshold for most dependents, the proposal will enable the taxpayer to determine if a potential dependent meets the gross income limitation by merely checking to see if the potential dependent is required to file a return -- if no return is required, the individual meets the gross income limitation.

The exception to the gross income limitation for foster children creates additional problems in determining whether an individual qualifies as a dependent. The regulations define a foster child as a "child who is in the care of a person or persons who care for the child as their own child." This is a subjective test which causes uncertainty and lack of uniformity in determining foster child status. An indication of the uneven application of the foster child test is the fact that until recently many field offices felt that a taxpayer's grandchild, niece, or nephew could not qualify as his/her foster child. To clarify matters, on March 31, 1978, the Service adopted regulations that set forth examples in which a grandchild and nephew were considered the taxpayer's foster child for purposes of the earned income credit -- presumably, the grandchild and nephew in these examples would also be considered the taxpayer's foster child for purposes of the dependency exemption.

The repeal of the exception to the gross income limitation will eliminate the distinction between "a child of the taxpayer" and any other individual supported by the taxpayer. As a result, it will no longer be necessary to determine whether an individual supported by the taxpayer is the taxpayer's foster child.

Finally, by precluding all individuals with gross income in excess of $3,300 from being claimed as a dependent, the proposal will obviate the need for making a support determination in many doubtful situations. Where an individual claimed as a dependent has substantial gross income, it is often very difficult to determine whether the taxpayer or the individual has provided over one half of the latter's support -- only monies actually expended for support items, not the total amount available, are taken into account. Under the proposal, a support determination will not have to be made if the individual has gross income in excess of $3,300.

6. MODIFY SUPPORT TEST IN THE CASE OF DIVORCED PARENTS

Summary

Treat a custodial parent as having provided over half the support of a child if a decree of divorce or separate maintenance, or written agreement between the parties, provides that the custodial parent is entitled to the dependency exemption.

Present Law

In order to claim a dependency exemption for an individual, the taxpayer must provide over half the support of the individual for the taxable year. Section 152(e) contains the rules by which divorced or separated parents shall be treated as providing over half of a child's support if (1) over half of the child's support during the year is received from the parents and (2) the child is in the custody of one or both of the parents for more than half of the year.

Section 152(e)(1) provides the "general rule" that over half of the support of such a child is treated as having been received from the parent who has custody for a greater part of the year unless the circumstances place the case within the exception set forth in either section 152(e)(2)(A) or (B).

Section 152(e)(2)(A) provides that over half the support of a child is considered received from the noncustodial parent if (i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year, provides that the noncustodial parent shall be entitled to the child's dependency exemption and (ii) the noncustodial parent provides at least $600 for the support of such child during that year.

Section 152(e)(2)(B) provides that over half the support of a child is considered received from the noncustodial parent if (i) the noncustodial parent provides $1,200 or more for the support of such child for the year (or if there is more than one such child, $1,200 or more for each of such children) and (ii) the custodial parent does not clearly establish that he/she provided more for the support of such child during the year than the parent not having custody.

Recommendation

Amend section 152(e)(2)(B) to make that section inapplicable if a decree of divorce or of separate maintenance, or written agreement between the parties, provides that the "custodial" parent is entitled to the dependency exemption for the taxable year.

Reasons for Change

Many taxpayers believe that a written agreement between divorced parents stating which parent is entitled to their child's dependency exemption is conclusive. This belief is erroneous. Section 152(e)(2)(A) applies only if the parent designated in the agreement as being entitled to the exemption for the year is the noncustodial parent. If the parent designated in the agreement is the custodial parent, section 152(e)(2)(A) will not apply, and the determination of which parent is entitled to the dependency exemption will be made on the basis of the other provisions of section 152(e).

Determining which divorced parent is entitled to a dependency exemption on the basis of the other provisions of section 152(e) will in certain situations produce a result inconsistent with the intent of parties as indicated by their agreement. For example, consider the following situation:

Taxpayers are divorced in 1974. The divorce agreement provides that the father is to receive the dependency exemption for their child for 1974 and 1975, after which the mother is to receive the exemption. The father's contribution toward the child's support is $1,000 in 1974 and 1975, and $1,400 in 1976 and 1977. The mother who has custody of the child furnishes $1,200 in support for the child in each of these years.

Under section 152(e)(2)(A) the terms of the divorce agreement will entitle the noncustodial father to the dependency exemption for 1974 and 1975, even though the custodial mother provided a greater portion of the child's support during those years. For 1976 and 1977, however, the divorce agreement will have no affect on which parent is entitled to the dependency exemption because the parent designated as being entitled to the exemption for those years is the custodial parent. Moreover, since the support provided by the noncustodial father during 1976 and 1977 is (1) over $1,200 and (2) greater than that provided by the custodial mother, under section 152(e)(2)(B) the father will be entitled to the dependency exemption for those years.

It should be noted that if the father had custody of the child, the mother would have been entitled to dependency exemption in all four years -- in 1973 and 1974 because she provided over half the support; in 1975 and 1976 because of the divorce agreement.

The proposal will make section 152(e)(2)(B) inapplicable where a written agreement between the divorced parents provides that the "custodial" parent is entitled to the dependency exemption. The effect of this change will be that the parent designated in the agreement will be entitled to the dependency exemption irrespective of which parent provides the greater support or has custody of the child (provided that a noncustodial parent in order to obtain the exemption furnishes at least $600 of support for the child during the year).

7. ALLOW FIXING UP EXPENSES TO BE DEDUCTED FROM SALE PROCEEDS IN DETERMINING GAIN FROM THE SALE OF A RESIDENCE

Summary

Allow fixing up expenses incurred in connection with the sale of a principal residence to be deducted from the sale proceeds in determining the amount realized from the sale.

Present Law

Section 1001(a) provides that the gain from the sale or disposition of property shall be the excess of the amount realized therefrom over the adjusted basis of the property. Section 1001(b) provides that the amount realized from the sale or disposition of property is the sum of any money received plus the fair market value of any property received.

Generally, most expenditures paid or incurred to effect the sale of property reduce the amount of gain. Capital expenditures are added to basis; non-capital expenditures reduce the amount realized. However, fixing up expenses described in section 1034(b)(2)(A) are not taken into account in determining the gain from the sale of a principal residence.

Recommendation

Amend section 1001 to allow fixing up expenses described in 1034(b)(2)(A) incurred in connection with the sale of a principal residence to be deducted from the sale proceeds in determining the amount realized from the sale.

Reasons for Change

Section 121, as amended by the Revenue Act of 1978, permits a taxpayer age 55 or older to exclude from gross income, on a one time elective basis, up to $100,000 of gain from the sale of his/her principal residence. If an electing taxpayer purchases a replacement residence, any gain from the sale of the old residence in excess of $100,000 is deferred to the extent provided under section 1034.

Section 1034 provides that if a taxpayer (any age) sells a principal residence and buys a replacement within a specified time period, gain is recognized only to the extent the adjusted sales price of the old residence exceeds the cost of the new residence (in the case of a taxpayer who makes a section 121 election, the cost of the new residence is reduced by the amount excludable under that section). Any gain realized from the sale but not recognized because of section 1034, reduces the taxpayer's basis in the replacement residence.

For purposes of determining the amount of the gain EXCLUDED under section 121 and the amount of the gain RECOGNIZED under section 1034, fixing up expenses are subtracted from the sales proceeds to arrive at the adjusted sales price. However, fixing up expenses are not taken into account in determining the amount of gain REALIZED from the sale.

The following illustrates the different treatment of fixing up expenses in the computations necessary for a sale to which section 1034 applies:

> Taxpayer (aged 50) sells a principal residence for $70,000 and buys another for $60,000. During the 90 days preceding the sale of the old residence, the taxpayer spent $1,000 for painting and wallpapering. Sales commissions and other selling expenses (lawyer's fees, termite inspection, etc.) were $2,000. Taxpayer's adjusted basis in the old residence was $40,000.

GAIN REALIZED
(Fixing up expenses disregarded)

Selling Price of Old Residence	$70,000	
Less: Selling Expenses	2,000	
Amount Realized		$68,000
Adjusted Basis of Old Residence		40,000
Gain Realized		$28,000

GAIN RECOGNIZED
(Fixing up expenses taken into account)

Selling Price of Old Residence	$70,000	
Less: Selling Expenses	2,000	
Less: Fixing Up Expenses (painting)	1,000	
Adjusted Sales Price		$67,000
Purchase Price of New Residence		60,000
Gain Recognized		$ 7,000

BASIS OF NEW RESIDENCE

Cost of New Residence		$60,000
Gain Realized	$28,000	
Gain Recognized	7,000	
Gain not Recognized		21,000
Basis of New Residence		$39,000

The different treatment of fixing up expenses in determining the gain REALIZED, RECOGNIZED, and EXCLUDED is confusing to many taxpayers. Taxpayer confusion in this area is further compounded by the fact that many fixing up expenses are very similar to certain capital expenditures that are added to the basis of the old residence. For example, if the above taxpayer instead of painting and wallpapering has spent the $1,000 to panel the walls of the old residence, the $1,000 expenditure would have been an addition to the taxpayer's basis in the old residence.

Fixing up expenses are also very similar to selling expenses — the latter are deducted from the selling price to determine both the adjusted sale price and the amount realized. Like selling expenses, fixing up expenses are made primarily to effect the sale of the old residence. The apparent distinction between the two types of expenses is that fixing up expenses are generally repair or decorating expenses that increase the value of the old residence; whereas selling expenses merely facilitate the sale of the residence and do not affect its value. It is questionable whether this distinction justifies the different tax treatment of the two expenses in the context of a sale of a principal residence.

Under the proposal, fixing up expenses will be treated like selling expenses and will reduce both the adjusted sales price and the amount realized (under the proposal, the gain realized in the above example would have been $27,000 and the basis of the new residence would have been $38,000). The result will be a considerable simplification of the forms and instructional material applicable to determining the gain from sale of a residence.

8. MAKE FEES LEVIED ON OIL PRODUCED FROM THE OUTER CONTINENTAL SHELF AN EXCISE TAX

Summary

Make fees levied on oil produced from the Outer Continental Shelf an excise tax subject to title 26 administrative provisions.

Present Law

Section 302 of the Outer Continental Shelf Land Act Amendments of 1978 (P.L. 95-372) requires the Secretary of the Treasury to collect fees (not to exceed 3 cents per barrel) levied on oil produced from the Outer Continental Shelf. The fees are to be placed in the Offshore Oil Pollution Compensation Trust Fund. Any person failing to pay these fees shall be liable for a civil penalty not to exceed $10,000 and interest from the date the fees were due. Upon failure to pay any penalty, fee, or interest on demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the trust fund against the person failing to pay.

Recommendation

Add a new section to chapter 32 of the Code that will make fees levied on oil produced from the Outer Continental Shelf an excise tax subject to title 26 administrative provisions.

Reasons for Change

The Outer Continental Shelf (OCS) fees, although similar to an excise tax, have not been designated as such and are not subject to the collection statutes applicable to an excise tax. Therefore, an independent collection system will be needed to accommodate the small number (between 50 and 100) of persons required to pay OCS fees. If the OCS fees are made an excise tax, the Service could use its existing procedures to collect the OCS fees which would avert any potential collection problems inherent in establishing a new independent administrative procedure for collecting such fees.

P.L. 95-372 does not provide definitive enforced collection actions in cases where the OCS fee payers fail to pay the fees timely or fail to timely file the required reports. Moreover, the collection procedure provided in the statute is cumbersome and costly. If the OCS fees are made an excise tax, the cost and burden of collecting them can be greatly reduced. Moreover, the existing civil and criminal sanctions for failure to pay an excise tax will provide a greater incentive for OCS fee payers to comply with the law.

The OCS fees are very similar to the section 4121 excise tax on coal produced from underground mines (P.L. 95-227). The OCS fees are used to fund a trust to reimburse parties injured by an oil spill. The section 4121 excise tax on coal is used to fund a trust to pay parties injured by black lung disease. In view of similarities of the purpose and mechanics of the two, it would be appropriate to treat them the same for tax purposes, i.e., make them both excise taxes.

Note: Proposed legislation (Superfund) would levy fees similar to the OCS fees on all domestic and imported oil. It is recommended that any fees levied under this legislation also be designated as an excise tax.

10. REPEAL REQUIREMENTS RELATING TO THE FILING OF A DECLARATION OF ESTIMATED TAX

Summary

Repeal Section 6015, Declaration of Estimated Income Tax by Individuals, and Section 6073, Time for Filing Declaration of Estimated Income Tax by Individuals. Amend Section 6153, Installment Payments of Estimated Tax by Individuals, to require payments of estimated tax only when the amount thereof for the year is expected to exceed $300 and a payment is due for the installment period. Amend Section 6654, Failure by Individuals to Pay Estimated Income Tax, so that no estimated tax penalty is imposed on taxpayers exempt from paying estimated tax because of the $300 rule.

Present Law

Section 6015(a) requires an individual to make a declaration of estimated tax if gross income for the year is expected to (1) exceed certain specific limits (either $5,000, $10,000, or $20,000 depending on the taxpayer's marital status and whether he/she can file a joint declaration with his/her spouse) or (2) include more than $500 from sources other than wages. However, no declaration is required if estimated tax is expected to be less than $100. Section 6015(c) defines "estimated tax" as the total of income and self-employment taxes less withheld taxes and certain credits.

Section 6073 requires calendar year taxpayers to file their declarations of estimated tax by April 15 (other dates are provided where section 6015(a) requirements to file are first met after April 1).

Section 6153 specifies the time for payment of estimated tax (as defined in section 6015(c)) with respect to which a declaration is required under section 6015. Generally, payments are required in 4 equal installments due April 15, June 15, September 15, and January 15.

Section 6654(a) provides for an addition to tax (penalty) for the underpayment of estimated taxes on the installment due dates specified in 6153. Section 6654(b) defines "underpayment" as the difference between the installment actually made (withholding plus estimated tax payments) and the installment that would be required to be paid if the estimated tax were equal to 80 percent of the tax liability shown on the taxpayer's return for the year. The addition to tax is determined by multiplying the applicable rate times the underpayment.

Section 6654(d) provides 4 exceptions to the imposition of a penalty for an underpayment. In effect, each exception is an alternative method for computing the estimated taxes due for a period. If the estimated taxes actually paid for a period equal or exceed the estimated taxes due for that period computed under any of the 4 exceptions, no penalty is imposed for an underpayment for the period.

Recommendation

Repeal sections 6015 and 6073.

Amend section 6153 to require payment of estimated taxes when the amount reasonably estimated for the year exceeds $300 and a payment is due for the installment period. Add a subsection to section 6153 defining "estimated taxes" in the same manner as the term is presently defined in section 6015(c).

Amend section 6654(b) to provide that amount of the underpayment shall be the lesser of the amount presently computed under the section or "the excess of the installment due based on 100 percent of the tax liability shown in the return, less $300, over the amount, if any, of the installment actually paid before the last date prescribed for such payment."

Reasons for Change

The present rules under section 6015 except two categories of taxpayers from filing a declaration of estimated taxes: (1) taxpayers with less than $100 in estimated taxes and (2) taxpayers whose expected gross income is less than a specified amount and includes less than $500 from nonwage sources. Since the rules under section 6153 governing the timing and the amount of the estimated tax payment apply only when a declaration is required, taxpayers who meet either exception are not subject to these rules. However, taxpayers who fail to make timely payments of estimated tax because they meet either of the two exceptions are subject to estimated tax penalties if taxes paid during the year do not equal or exceed 80 percent of the tax shown on the return.

The reason for this anomaly is that the penalty computation does not take into account either of the two exceptions to filing a declaration. One way to correct the problem would be to make the estimated tax penalty provisions inapplicable to taxpayers exempt from filing a declaration. The problem with this solution, however, is that the estimated tax penalty is presently the only civil penalty for overstating withholding exemptions on Form W-4 (section 6682 provides a $50 penalty for understating wages or overestimating excess itemized deductions but no penalty for overstating exemptions). Thus, this solution would invite wage earners who meet the gross income exception to overstate their withholding exemptions.

An alternative solution would be to eliminate the gross income exception in section 6015 and make the estimated tax penalty inapplicable to taxpayers who meet the $100 (proposed $300) *de minimis* exception. In effect, this is what the proposal does.

A second problem with present law is that it technically requires a declaration of estimated tax to be filed in situations where no payment is due. For example, consider the case of a self-employed individual with estimated tax of $2,000 and overpayments of tax from the prior year of $500. If this taxpayer elects to have the overpayment applied to his/her current tax liability, no estimated tax payment will be due for the first quarter. However, present law technically requires this taxpayer to file a declaration by April 15. As a result, many taxpayers in similar situations who owe no estimated tax for the first quarter file a declaration along with their tax return for the prior year. By repealing the requirements for filing a declaration and requiring an installment of estimated taxes only when a payment is *due*, the proposal will eliminate this problem.

The Service has little need for a declaration of estimated tax at any time. There is no penalty for failure to file a declaration. Moreover, the penalty for failure to pay estimated tax is computed without regard to any of the information contained in the declaration voucher or estimated tax worksheet. The only information presently needed by the Service with respect to an installment of estimated tax is the name, address, and taxpayer identification number of the taxpayer making the installment. Should any additional information be deemed necessary, adequate authority exists under section 6001 to obtain such information.

Another problem with the present estimated tax rules is that they require taxpayers to make payments of small amounts of estimated tax. Under the present declaration rules, taxpayers are required to make estimated tax installments as small as $26. Moverover, because the present penalty computation does not take into account the $100 *de minimis* exception, certain taxpayers are required to make installments of less than $26 to avoid an estimated tax penalty (processing tolerances preclude penalties from being assessed in most of these cases).

By increasing the *de minimis* exception from $100 to $300 and changing the penalty computation to take into account the exception, the proposal will, generally, eliminate the need for taxpayers to make estimated tax installments of less than $75.

Under the proposal, declarations of estimated tax will no longer be required. Instead, all taxpayers will be required to make estimated tax installments when estimated taxes can reasonably be expected to exceed $300 and a payment is due. The $300 *de minimis* amount will be taken into account in computing the estimated tax penalty so that penalties will not be imposed on taxpayers exempted from making estimated tax payments.

Increasing the *de minimis* amount will delay the receipt of certain revenues. This will be offset, in part, by the acceleration of certain other revenues by the elimination of the gross income exception. The net shift in receipts is unknown, but it is not expected to be significant. The proposal will not affect tax liability.

INCREASE THE APPROPRIATION FOR THE REVOLVING FUND FOR THE REDEMPTION OF REAL PROPERTY

Summary

Amend section 7810(a) (related to a revolving fund for redemption of real property) to authorize appropriations not to exceed $1,500,000 in the aggregate.

Present Law

Section 7810(a), enacted by section 112(a) of the Federal Tax Lien Act of 1966, provides for the establishment of a revolving fund for all expenses necessary for the redemption of real property as provided in section 7425(d) and section 2410 of Title 28 of the United States Code. There are authorized to be appropriated such funds (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of the section.

Under present law, the Government can redeem real property on which it has a junior lien where the property is sold at a foreclosure sale brought by a holder of a senior lien. By exercising its power of redemption, the Government can purchase property sold at distress prices and resell the property at a profit. This profit is applied in satisfaction of the taxpayer's tax liability.

Recommendation

Amend section 7810(a) by substituting $1,500,000 for $1,000,000 as the authorized appropriation.

Reasons for Change

Prior to the enactment of section 7810(a) of the Code, the Service exercised the Government's authority to purchase property only in the most flagrant cases. During FY 1966, $162,500 was committed to be available for the purchase of property. Because this amount was committed when the purchase of property was extra-procedural, it appeared that a substantially greater amount would be utilized if funds were readily available. Therefore, $1,000,000 was considered as the minimum amount to have an effective revolving fund for the purchase of property.

Since enactment of section 7810(a), the funds were appropriated as needed. At the end of FY 1970, the authorized aggregate appropriation of $1,000,000 was reached. The number of redemptions, and the dollar amount of each has, however, increased since 1970. In FY 1978, for example, the revolving fund was used for 39 redemptions with a value of $1,709,744. Additionally, at one point in time during FY 1978 the balance in the fund was below $100,000. The FY 1978 redemption figure exceeds the aggregate limitation because as previous amounts expended are returned to the fund when property is resold, the funds are again available for use in redemptions. The fund could be depleted in the future as the high rate of inflation in real property sales value causes higher fund amounts to be used in each redemption.

Proposed Effective Date

The effective date of this proposal should be the date of enactment.

Internal Revenue Service
Deadwood - Section 501(f)(3)(B)

Problem

Section 501(f)(3)(B) refers to income which is excluded from taxation under section 115(a). As amended by the Tax Reform Act of 1976, section 115 has no subsections.

Recommendation

Substitute "section 115" for the reference to "section 115(a)" in section 501(F)(3)(B).

Deadwood — Section
992(d)(6)

Problem

Section 992(d)(6) provides that China Trade Act corporations receiving the special deduction under Section 941(a) are ineligible to be treated as a DISC. Section 1053(c) of the Tax Reform Act of 1976 repealed Code section 941(a) effective for taxable years beginning after December 31, 1977.

Recommendation

Repeal section 992(d)(6), add "or" after the comma in section 992(d)(5), and redesignate section 992(d)(7) as section 992(d)(6).

* 1. ESTABLISH LIMITATION ON THE TIME FOR FILING REFUND SUIT WHERE SERVICE FAILS TO NOTIFY OF DISALLOWANCE OF REFUND CLAIM

Summary

Amend section 6532(a) to limit the period for filing a refund suit where the Service fails to notify the taxpayer of disallowance of the claim for refund to 4 years from the date the refund claim was first filed.

Present Law

Section 6532(a)(1) provides that no suit for refund shall be begun before the expiration of 6 months from the date of filing the refund claim nor after the expiration of 2-years from the date the Secretary mails the taxpayer a notice of disallowance of the refund claim.

Recommendation

Amend section 6532(a)(1) to provide that a refund suit must be instituted within (1) two years from the date of mailing a notice of disallowance of a claim for refund, or (2) four years from the date of filing the claim for refund where the Internal Revenue Service has not mailed a notice of disallowance, and the taxpayer has not waived such requirement within 4 years from the date of filing the claim for refund.

Reasons for Change

Where the Internal Revenue Service has not disallowed a claim for refund and the taxpayer has not waived the requirement that he/she be mailed a notice of disallowance, there is, in effect, no statute of limitations under existing law, and a taxpayer may commence a refund suit any time after the expiration of six months from the date of filing the claim for refund. For example, in Detroit Trust Co. v. United States, 130 F. Supp. 815 (Ct. Cl., 1955), the refund suit was filed thirty years after the filing of the claim for refund.

The proposed amendments to section 6532(a) are needed to help prevent the litigation of stale claims. They are also needed to protect the Government against contentions that a claim for refund was filed many years ago in situations where the records have been destroyed and the Service is unable to verify that such a claim was in fact filed.

In order to assure that taxpayers have adequate notice of the new rules, the legislation could provide that the 4-year limitation period would not apply unless either (1) the form on which the claim for refund was filed clearly and conspicuously states the new rule, or (2) the taxpayer is notified by letter of the new rule.

* 2. EXTENSION OF PERIOD FOR ASSESSMENT

Summary

Provide for an extension of the period for assessment solely for assessing taxes in cases where a taxpayer voluntarily increases the tax liability reported on an original return by filing an amendment within 60 days of the expiration of the period for assessment.

Present Law

Section 6501 generally limits the period for assessing tax to three years beginning with the date the return is filed, or the prescribed due date of the return, whichever is later. There are exceptions to this general rule. For example, fraud, extension by agreement, substantial omission of items, certain income tax returns of corporations, and net operating loss or capital loss carrybacks are specifically provided for under this section. However, there is no exception which permits the extension of the period for assessment solely for the purposes of processing an amendment to an original return and assessing additional tax.

The Supreme Court in Zellerback Paper Co. v. Helvering, 293 U.S. 172, 180 (1934), concluded, "... that a second return, reporting an additional tax, is an amendment or supplement to a return already upon the files, and being effective by relation does not toll a limitation that has once begun to run." This case supports the Board of Tax Appeals' statement on National Refining Co., 1 BTA 236 (1924), in which it clearly ties the amended return to the original return and stipulates that the former shall have no independent effect.

Recommendation

Amend section 6501 to provide that if a taxpayer amends, within 60 days of the expiration of the period for assessment, an original return to show an increased tax liability, the period for assessment will be extended solely to allow the Service 60 days from the date the amendment is filed to process the amendment and assess the additional tax.

Reasons for Change

Present law does not provide for the assessment of tax after the expiration of the period for assessment. Because amended returns are tied to the original returns and have no independent effect, it becomes very difficult to process amendments and assess addditional tax for those returns filed on, or just prior to, the expiration of the period for assessment. Without timely assessments, the additional taxes cannot be collected.

Under current procedures, service centers make every effort (including overtime hours) to identify for immediate processing and assessment amendments to an original return which show additional taxes due. However, even with these extraordinary measures, service centers are often unable to timely assess additonal taxes reported by taxpayers because the amendments are received too close to or after the expiration date of the period for assessment.

Experience has shown that taxpayers often amend their original returns to indicate additional taxes due, presumably to protect themselves from charges of fraud or substantial omission of items, or to guarantee a credit in their behalf, e.g., self-employment taxes. Many of the amended returns submitted near the time of statute expiration indicate additional self-employment taxes owed. In these cases the taxpayer receives SECA credit for taxes owed because the amended return was postmarked on or before the last day for assessment. However, quite often the taxes owed cannot be collected because the assessment period expired before actual receipt or processing of the amended return.

Although the limitation on assessments is for the protection of taxpayer rights, it also provides IRS with a 3-year period to assess taxes based upon the return as filed by the taxpayer. Because the statute did not contemplate the subsequent amending or correcting of a return to show additional taxes due, no extension to assess additional taxes based upon such amendment was provided. This proposal would provide for a limited extension of the period for assessment whenever a taxpayer corrects or modifies the original return to show an additional tax due just prior to, or on the expiration date of such period.

A reasonable period of time to process and assess an amendment would be 60 days. An extension would apply only to an amendment showing additional tax due filed within 60 days prior to the expiration of the period for assessment for the original return. For example, if the period for assessment of a taxpayer's original return expires on 4/15/79, an amendment made 29 days prior to 4/15/79 (increasing the tax liability for that return) would automatically extend the period for assessment 30 days beyond 4/15/79.

This proposal is solely for the purpose of easing the administrative burden of processing an amendment and assessing the additional tax shown when the amendment is filed on, or just prior to, the expiration date the period for assessment. It does not impact on the deficiency provisions of the Code.

There is no data available as to the number of taxpayers who will be affected by the proposal.

*3. PROVIDE NEW RULES TO FACILITATE THE RECOVERY FROM TREASURY EMPLOYEES OF MONIES OR PROPERTY COLLECTED BUT NOT ACCCOUNTED FOR AND PAID OVER

Summary

Amend section 7803(c) to facilitate the assessment and collection of monies or property collected by Treasury employees in connection with the internal revenue laws, but not accounted for and paid over.

Present Law

Section 7803(c) provides that if a Treasury employee fails to account for and pay over any amount of money or property collected in connection with the internal revenue laws, the Secretary shall issue notice and demand for payment of such amount and upon the employee's failure to pay the amount within the time specified in the notice, the amount shall be deemed assessed as of the date of such notice, and subject to the collection the same as any other assessed taxes.

Recommendation

Amend section 7803(c) to: (1) extend all of its provisions to former officers or employees of the Treasury Department who, acting in connection with the internal revenue laws, failed to account for and pay over any amount of money or property collected or received by them during the time they were employed by the Treasury Department; (2) apply the provisions of Subchapter A of Chapter 63 (assessment), Chapter 64 (collection) and all other provisions of law relating to the assessment and collection of taxes in respect of such amount; (3) provide that the assessment of any liability imposed under 7803(c) must be made within three years from the date the Secretary is notified in writing of the loss by the officer or employee or former officer or employee who failed to account for money or property collected; (4) provide that if relief is granted to the delinquent officer or employee by a General Accounting Office finding of "no negligence" (pursuant to 31 U.S.C. 82a-1), then no assessment shall be made and any assessment already made will be abated; (5) provide that nothing contained in subsection 7803(a) will prohibit the use of 31 U.S.C. 951 et. seq., 28 U.S.C. 2415, nor any other remedy afforded the United States by the United States Code and; (6) provide that if any claim is compromised and/or collected pursuant to another section of the U.S. Code, no assessment for the claim shall be made under 7803(c) and any uncollected portion of an assessment already made will be abated.

Reasons for Change

While section 7214 provides a felony penalty for offenses by officers and employees of the United States, the Code does not provide that Service employees (past, present, and former) who misapporopriate money or property collected in connection with the revenue laws are personally liable, as clearly they should be. Misapporopriated monies and property which cannot be recovered are lost to the general revenues. The proposed amendment to section 7803 would correct this situation.

* 4. EXTEND DEFICIENCY PROCEDURES TO FICA AND RRTA TAXES ON TIPS NOT COLLECTED BY EMPLOYER

Summary

Amend sections 6211, 6212, and 6213 to permit employee FICA and RRTA taxes on tips to be included on the statutory notice of deficiency for income taxes.

Present law

Sections 6211, 6212, and 6213 provide deficiency procedures for income, estate, gift and certain excise taxes. These procedures are not specifically applicable to taxes imposed by sections 3101, 3111, 3201, 3221 or 3202.

Recommendations

Amend section 6211 to include employee FICA and RRTA tax on tips in the definition of a deficiency. Amend section 6212 to permit the inclusion of the employee FICA and RRTA tax on tips in the statutory notice of deficiency for income taxes. Amend section 6213(b) to provide authority for the Service to make a summary assessment against an employee for FICA or RRTA taxes in respect to tip income as if it were due to a mathematical or clerical error appearing on the return.

Reasons for Change

In situations where the employee is required by sections 3102(c) or 3202(c) to pay the FICA or RRTA tax on tips which the employer is unable to collect from the employee's regular salary and other funds under the employer's control, the employee must include this tax on Form 1040. Present law, however, does not permit including this tax in a notice of deficiency for the income tax. Thus, if there is an omission of tips from gross income for income tax purposes, the resulting assessments of the income tax and FICA tax liabilities must be made in different ways. For example, if the employee does not agree to an increase in income because of the omission of tips and petitions the Tax Court from the deficiency notice, the statutory period for assessment of employment taxes must either be kept open until the income tax issue is resolved or an employment tax assessment made, the tax collected, and a partial refund made when the income tax issue is disposed of. This creates control and reconsideration problems and is confusing to taxpayers affected.

The amendments to sections 6211 and 6212 will resolve these problems by permitting the inclusion of the employee tax in the notice of deficiency for the income tax. The amendment to section 6213 will permit the Commissioner to continue to make mathematical error assessments in situations where he/she deems it practical, such as where the employee has included tips in his/her computation of gross income but has failed to compute the employee tax on such tips.

5. EXTEND INTEREST-FREE PERIOD TO REFUNDS OF OVERPAYMENTS OF ALL TYPES OF TAXES

Summary

Amend section 6611(e) to provide, with respect to all types of taxes, a 45-day, interest-free period for processing refunds of overpayments of tax and provide for the payment of interest in certain instances in which a refund check is lost or stolen.

Present law

Section 6611(e) provides that if an overpayment of income tax is refunded within 45 days after the due date of the return or within 45 days after the date the return is filed (if filed after the due date) no interest is to be paid on the overpayment. Furthermore, there is no provision for payment of interest beyond the date of the refund check and, therefore, a situation involving a lost or stolen refund check that has to be reissued after the expiration of the 45-day period is not covered.

There is no interest-free period for refunds of overpayments of taxes other than income taxes.

Recommendations

(a) strike out "Income" from the title of section 6611(e)

(b) strike out "subtitle A" and insert "this title"; and

(c) add at the end of subsection (3) -- "Where refund of an overpayment is sent by mail, properly addressed to the taxpayer's last known address, if the taxpayer can establish that the refund was not received within 30 days after the date of the refund check and providing the refund was not returned as undeliverable, interest shall be allowed from the later of (1) the date of the check or (2) the date by which an overpayment must have been refunded in order to avoid the payment of interest under the preceding sentence to the date a refund check is reissued."

The effect of these changes will be to extend the 45-day interest-free period to cover overpayments of all taxes and not restrict it to just income tax overpayments as it does at present; and require interest to be paid with respect to a lost or stolen refund check reissued after the expiration of the 45-day interest-free period.

Reasons for Change

There is no interest-free period for Federal taxes other than income taxes. This treatment of interest on tax refunds is inconsistent and results in excessive interest expense because the Government is not allowed a reasonable period of time in which to process the return before interest payments are required. The need to extend the applicability of the interest-free period is particularly acute when non-income tax returns are delinquently filed. Approximately $21.5 million in interest was paid by the Government in fiscal year 1977 on refunds of non-income tax overpayments. By amending section 6611(e) as recommended, a significant part of the annual interest paid on refunds of non-income tax overpayments would be saved. In addition, the Service would be afforded greater flexibility in the scheduling of returns to be processed.

The proposal to authorize payment of interest when a refund check is lost or stolen and a replacement check is issued after the expiration of the 45-day interest-free period is based on the conclusion that present law is inequitable to those taxpayers whose refund checks are lost or stolen through no fault of their own. The authorization of additional interest will compensate taxpayers for the additional period that the Government has the use of their money.

6. APPOINTMENT AUTHORITY FOR TREASURY ATTORNEYS

Summary

Change the statute to conform to actual practice by permitting a delegate of the Secretary of the Treasury to appoint and fix the duties of Treasury attorneys.

Present Law

Code section 7801(b)(3) provides that the Secretary of the Treasury may appoint and fix the duties of such "other attorneys" as he may deem necessary. This appears to require the Secretary to personally appoint and fix the duties of Treasury attorneys, since Code section 7701(a)(11) defines the term "Secretary of the Treasury" as the Secretary of the Treasury, personally, and does not include any delegate of his. Code section 7701(a)(11) also defines the word "Secretary" as the Secretary of the Treasury or his delegate.

Recommendation

Change the statute to conform to actual practice by substituting the word "Secretary" for the term "Secretary of the Treasury" in Code section 7801(b)(3).

Reasons for Change

Since the Secretary of the Treasury does not personally appoint and fix the duties of Treasury attorneys, the word "Secretary" for the term "Secretary of the Treasury" in Code section 7801(b)(3) will permit a delegate of the Secretary to perform this task.

7. SPECIFY THE TIME IN WHICH PLEADINGS MUST BE SERVED ON THE UNITED STATES IN CONNECTION WITH A JUDICIAL REVIEW OF A JEOPARDY ASSESSMENT

Summary

Amend the Code to provide the Government with a reasonable time within which to prepare its case in connection with a judicial review of a jeopardy assessment.

Present Law

Section 7429 provides, in part, that a taxpayer may bring a civil action in a district court of the United States against the United States for the purpose of securing judicial review as to the reasonableness and appropriateness of the Government's action in making a jeopardy assessment. Within 20 days after such an action is commenced, the district court is required to decide the matter.

There is no provision in section 7429 with respect to the time within which pleadings must be served on the United States prior to the date dictated for court action.

Recommendation

Amend section 7429(b)(2) to provide that the district court must make its determination within 20 days after proper service of the complaint upon the United States.

Reasons for Change

In several actions that have been commenced under this section, the United States has not been served with the taxpayer's pleadings until shortly before the time that the court is to make a decision. Under those circumstances, it is extremely difficult for the United States to adequately defend the assessment in court.

This amendment would give much needed specificity and equity to section 7429.

* 9. PAYMENT OF INTEREST TO TAXPAYER WHERE A LEVY IS WRONGFUL

Summary

Amend section 6343(b) to authorize the payment of interest to injured parties where the Secretary or his/her delegate determines that a levy was wrongful.

Present Law

Present law provides no authority for the payment of interest where the Secretary or his/her delegate determines that a levy was wrongful.

Recommendation

Amend section 6343(b) to authorize the payment of interest at the currently prevailing rate in situations where the Secretary or his/her delegate determines, under section 6343, that a levy was wrongful. Interest will be payable not only to the taxpayer against whom is assessed the tax out of which such levy arose, but also to any other person entitled to bring a civil action for such wrongful levy under section 7426. As in the case of civil actions involving wrongful levy, no interest will be payable where the specific property levied upon can be returned to its owner.

Reasons for Change

At the present time, if the Secretary or his/her delegate determines that a levy is wrongful, he/she is authorized to return the property levied upon, or if the property was sold pursuant to the levy, return an amount of money equal to the proceeds of the sale. The current law, however, makes no specific provision for the payment of interest where the Secretary or his/her delegate determines that a levy is wrongful. This is to be compared with the provision of the law allowing interest if a person sues the United States on the basis of a wrongful levy and is successful. See section 7426(g) (relating to the payment of interest in civil actions resulting from a wrongful levy). It would seem that no valid basis exists for distinguishing between a levy determined to be wrongful by judicial decree and a levy determined to be wrongful by administrative determination. The loss to the owner of the property is the same.

11. Failure to Supply Identifying Numbers

Section 6109 and 6676

Recommendations:

1. Amend section 6109 to require an individual to furnish in his or her income tax return the identifying number of his or her spouse or former spouse if information reported on the return concerning income, deductions, credits, exclusions or exemptions indicates that the present or former spouse may be required to file another income tax return that relates in any way to such information.

2. Amend section 6676 to include a civil penalty for not furnishing the identifying number asked for in recommendation 1, unless there is reasonable cause for such failure. Increase the present section 6676 penalty for failure to supply identifying numbers from $5 for each failure to $25 for each failure, unless it is shown that such failure is due to reasonable cause.

Reasons for Change

The taxpayer identifying number is the basis for the entire tax administration system. Without this information it is difficult to control returns filed by related taxpayers to insure that items reported on one return are properly reported on the related one. For example, where married persons are filing separate returns, the IRS needs to be able to accurately identify both spouses to insure that if one itemizes deductions, the other also itemizes. Also, the number is needed to link and monitor returns of married taxpayers filing separate returns who elect, under section 121, to exclude up to $100,000 of gain realized on the sale of a personal residence. This election when made by one spouse binds the other spouse, regardless of whether they file joint or separate returns. Finally, if alimony payments are deducted on a return, the IRS needs the identifying number of the recipient of the payments to verify that the income is reported.

The IRS has been experiencing difficulties in obtaining identifying numbers of spouses or former spouses. In the married filing separate category, the problem is especially serious. For tax year 1977, attempts were made to obtain accurate identifying numbers of spouses from 709,000 separately filed returns. From this number, only 152,000 linkages were made to spouses' returns.

At present, there is no requirement that an identifying number be furnished under the conditions mentioned above even though the numbers are needed for tax administration purposes and, in cases of married taxpayers filing separately, are requested in the returns. To improve tax administration in these areas, taxpayers should be required to furnish identifying numbers of spouses or former spouses when such information is needed to insure compliance with the tax laws. Also, a civil penalty to encourage taxpayers to supply the numbers should be provided since such numbers are vital to the tax accounting system.

Because of the importance of identifying numbers to the tax administration system, it is recommended that the penalty for not supplying such numbers be substantially increased (from $5 to $25). The present $5 penalty has not proven to be an effective deterrent to noncompliance. Also, the cost of contacting a taxpayer (and the related correspondence, controls, etc.) to obtain the number in most cases exceeds the amount of the penalty which can be assessed for noncompliance.

* 12. REDUCE THE PENALTY FOR FAILURE TO COLLECT AND PAY OVER EMPLOYMENT TAXES

Section 7215

Recommendation

Amend section 7215 to reduce from $5,000 to $1,000 the monetary penalty for failure to collect, account for, and pay over employment taxes required by section 7512 in order to bring prosecutions within the jurisdiction of U.S. magistrates.

Reasons for Change

Reducing the monetary penalty for a section 7512(b) violation from $5,000 to $1,000 would bring prosecution of this misdemeanor within the jurisdiction of a U.S. magistrate, where a greater number of convictions are possible. The dollar criterion for magistrate jurisdiction is presently set by 18 U.S.C. 3401.

Trust fund violations are seldom accepted for prosecution by U.S. attorneys, who consider them of minor significance. When violations are prosecuted, District Court dockets are so consistently crowded that trust fund violations are accorded a very low priority.

U.S. magistrate dockets, on the other hand are far less crowded. If jurisdiction were to rest with magistrates' courts, convictions of trust fund violators should be greatly increased.

Actually, a substantial amount of money is involved. One-half of all delinquent taxpayers are Business Master File taxpayers, and of this number 85% are trust fund delinquencies. The inventory of delinquent trust fund cases at the end of 1973 was 429,000, with a total dollar value of $803 million.

14. Failure to File Returns or Annual Reports By Exempt Organizations and Certain Trusts

Section 6652(d)

Recommendations

Retain the present penalty of $10 a day for the period during which an exempt organization fails to file a return or report, with the total amount imposed not to exceed $5,000. However, if the organization's assets are less than $50,000, the amount of the penalty cannot, under any circumstances, exceed 10 percent of the value of its assets.

Reasons for Change

Under present law, a penalty of $10 per day (up to a maximum of $5,000) is imposed for each day a tax exempt organization fails to file a required return. The penalty will not be asserted, however, if a reasonable cause for not filing can be established. There is also a similar $10 a day penalty to be assessed against an exempt organization official who is responsible for filing a return but who fails to file it timely. Finally, a $10 a day penalty applies in cases where a private foundation fails to file a copy of its annual report with the IRS, fails to make its annual report available at its office for public inspection, or fails to publicize its availability.

The IRS receives many complaints from exempt organizations about the severity of this penalty. When it is assessed, in most cases reasonable cause is established and the assessment abated. For example, in the 18 month period ending June 30, 1973, the "failure to file" penalty was assessed against 3,290 tax exempt organizations. Total assessments were $6,351,000 of which all but $33,500 was abated on the grounds of "reasonable cause." The primary reasons for the abatements fell into the following two categories:

(a) Organizations changed officers and the new officers were not aware of the filing requirements.

(b) The dollar amount of the assessment amounted to more than the organization possessed in cash or other assets.

To strengthen the penalty for small organizations (part (b) above), it is recommended that the maximum amount of the penalty should be limited to a percentage of assets up to $50,000. This will create an "ability to pay" situation and, thereby, make the penalty more meaningful and, hopefully, a deterrent to noncompliance.

15. Failure to File a Tax Return or to Pay Tax

Section 6651

Recommendations

1. Retain the present addition to tax for failure to file a return at 5 percent per month, but not to exceed 25 percent in the aggregate. Do not reduce the addition for failure to file by the amount of the addition for failure to pay. Both additions should run concurrently.

2. Increase the addition to tax for failure to pay tax when prescribed from 0.5 percent per month, but not to exceed 25 percent to 1.0 percent per month or fraction thereof, but not to exceed 25 percent in the aggregate. This amount should be asserted against the amount shown on the return or the amount that should have been shown on the return but was not because of a mathematical or clerical error having been made by the taxpayer. Also, this addition for nonpayment should run from the date a "substitute return" is prepared by the IRS if the taxpayer does not file a return voluntarily.

3. Increase the addition for failure to pay an amount required to be shown on a return within 10 days of the date of notice and demand from 0.5 percent per month to 1.0 percent per month, but not to exceed 25 percent in the aggregate. This addition should be asserted in addition to any late filing penalty.

4. Provide that additions to tax for failure to pay within 10 days of notice and demand may be assessed and collected during the period within which the tax to which such amounts relate may be collected.

Reasons for Change

The general consensus of IRS field people who deal with the addition to tax for failure to file timely tax returns is that the 5 percent per month addition is fair and serves its purpose as a deterrent to noncompliance. Further available statistical data obtained from IRS master files tends to indicate reasonable compliance in this area. However, this same result does not follow for the addition for failure to pay.

The consensus of knowledgeable field people is that the failure to pay addition is ineffective and should be increased. This conclusion is supported by statistical data from IRS files. Over the past 3 years (10/75 through 9/78), 9.2 million individual taxpayers were assessed additions to tax for failure to pay tax when due. Of these, 2.2 million (or 24 percent) had the same addition asserted against them more than one time during the three year period. Net assessments for additions to tax for this period totaled $188.6 million.

To make the failure to pay addition a more effective deterrent to compliance, the present addition of 0.5 percent per month must be increased and the term of the penalty decreased. The present rate, even when coupled with the per annum interest charge (6 percent),is simply too low to provide a sufficient deterrent to taxpayers who are inclined to defer paying their taxes rather than to use their own funds or borrow the funds to meet their obligations. Also, the present low rate of this addition and its term of application makes it impossible to ever reach the maximum amount of 25 percent. For example, for months in which both failure to file and failure to pay additions apply, the amount of the late filing addition will be reduced by the amount of the late payment addition. Therefore, if a return is filed 50 months late, the combination of the late filing and late payment additions will reach 47-1/2 percent (22-1/2 percent for failure to file and 25 percent for failure to pay). If a return is filed 5 months late, the combination of the late filing and late payment additions can reach only 43 percent (22-1/2 percent for failure to file and 20-1/2 percent for failure to pay) because of the expiration of the 36 month statutory period of limitations on assessment. If a return is timely filed but the tax not paid, the maximum late payment addition that can be assessed is only 18 percent because of the 3 year period of limitations on assessment.

The late payment addition should be made applicable to a balance of tax that becomes due as the result of correction of a mathematical or clerical error on the return. This would permit an adjustment in the amount of the late filing addition (an increase or decrease) if an obvious error was made in determining the amount of tax subject to the addition.

The existing "amount shown" language for the failure to pay addition to tax has been interpreted to apply only to returns actually filed by the taxpayer or his representative and not to the amount shown on a substitute return filed by the IRS for a taxpayer who fails to file. Assuming a taxpayer refuses to pay the tax after a substitute return is filed and a notice and demand for payment is issued, the penalty for failure to pay runs only from the date of such notice and demand rather than from the due date of the delinquent return, as is the case of the addition for failure to pay tax shown on a return filed by a taxpayer. Thus, the maximum cumulative addition for a taxpayer who fails to file altogether is postponed far longer than it is for a taxpayer who does file but fails to pay the taxes due.

For purposes of consistency of treatment, the addition for failure to pay tax assessed within 10 days from notice and demand should also be increased to 1.0 percent per month (maximum 25 percent) and should be in addition to any late filing penalty. This increase would also help compensate for the additional cost involved in collecting the additional tax due from taxpayers who delay payment for long periods of time.

Under present law, assessment of the addition to tax for failure to pay within 10 days after notice and demand (section 6651(a)(3)) can only be made during the statutory period for making an assessment of tax (normally within three years after the return was filed).Therefore, if a deficiency in tax is assessed near the expiration of the period for assessment and the taxpayer does not pay the tax plus interest during the period for assessment, the monthly addition for failure to pay cannot be assessed even though the deficiency plus interest can be collected within 6 years after assessment of the tax (section 6502(a)). If the monthly additions for failure to pay after notice and demand are to encourage the payment of delinquent tax, capability must exist to assess and collect these amounts for the entire period for which they apply. To accomplish this, section 6651 or 6502 should be amended as suggested by recommendation 4.

19. LEVY ON A TAXPAYER'S INSURANCE POLICY

Summary

Amend section 6332 (b) (2) to provide that the government is entitled to be paid, 90 days after service, the cash loan value of a life insurance or endowment contract determined on the date the notice of levy is served.

Present Law

Prior to the Federal Tax Lien Act of 1966 (P. L. 89-719, Oct. 11, 1966) the Government had to proceed by means of a foreclosure suit against a taxpayer's total rights in a life insurance or endowment contract whenever it sought to collect a taxpayer's rights in a contract which had not matured. Section 104 (b) of the Act amended section 6332 (b) to provide an alternative procedure to a foreclosure suit. Under section 6332 (b) the Government is permitted to levy against the cash loan value of a life insurance policy or annuity contract. Where the Government levies on the cash loan value of the contract, the insurance company generally must pay the cash loan value over to the Government 90 days after the levy.

Currently, the amount subject to levy is subject to two interpretations. Two cases hold that the levy on the cash loan value of a taxpayer's insurance policy entitles the government to receive the value of that policy as it exists 90 days after service of the notice of levy and not as of the date the notice was served. *United States v. Equitable Life Assur. Co. of U.S.*, 442 F. Supp. 500 (S.D.N.Y. 1977); *United States v. Prudential Insurance Co. of America*, 461 F. 2d 208 (5th Cir. 1972). Conversely, § 301.6332-2 (b) (1) of the regulations provides that ". . . no event during the 90 day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy." Example (3) under § 301.6332-2 (c) (2) restates this position.

Although the court cases and the Treasury regulations are in conflict, Chief Counsel has recommended that the cases not be appealed because there is no conflict between the circuits. Additionally, until the statute is clarified by legislation, the Government will no longer litigate this issue.

Recommendation

Amend section 6332 (b) to expressly provide that the Government is entitled to be paid, 90 days after service, the cash loan value of a life insurance or endowment contract determined on the date the notice of levy is served.

Reasons for change

The decisions in the *Prudential* and *Equitable Life* cases which hold that the Government is entitled to receive the cash loan value of a policy as it exists 90 days after service of the notice of levy, has the consequence of providing a taxpayer with a gratuitous 90-day option to defeat the Government's lien by means of a unilateral action (failure to pay an insurance premium) wholly within the taxpayer's own control. This position gives a recalcitrant taxpayer another opportunity to avoid the payment of taxes.

Additionally, the position taken in these cases contravenes Treas. Reg. § 301.6332-2 (b). This section generally provides that the government is entitled to the cash loan value of a life insurance or endowment contract as it is determined on the date the notice of levy is served. The Service's position is more consistent with section 6331 (b) relating to levy and distraint than the position taken by the courts. Section 6331 (b) states that " . . . a levy shall extend only to property possessed and obligations existing at the time thereof . . . ." If the courts' interpretations in Prudential and Equitable Life are correct, this language must be construed to mean property possessed and obligations existing 90 days after service of the notice of levy. This results in the assumption that Congress prescribed two different kinds of levies -- those immediately operative and those having only prospective effect.

The position taken in § 301.6332-2 (b) also seems to reflect more closely congressional intent. The legislative history of section 6332 (b) states that "where the Government levies on the cash loan value of the contract, the insurance company generally must pay this cash loan value over to the Government 90 days after the levy." S. Rep. No. 1708, 89th Cong., 2d Sess. (1966-2 C.B. at 888). This language shows that Congress intended the Government to receive the amount of the cash loan value as of the date the levy is served, and not its amount 90 days later.

Because Chief Counsel has determined that further litigation would be fruitless under the current statute, the statute must be clarified by legislation.

Proposed Effective Date

The effective date of this proposal should be the date of enactment.

Senator SCHMITT. Have you examined in any way if a lower rate of taxation could be balanced by the elimination of selective deductions and still have an equitable total?

Mr. KURTZ. Again, primarily the Treasury economists do that. We do some of the basic statistical work for Treasury, but again that is the primary responsibility of the Office of Tax Analysis in the Treasury Department.

Senator SCHMITT. But you would have most firsthand information on which deductions seem to cause the biggest compliance problem.

Mr. KURTZ. Yes, and that information is submitted on a regular basis to Treasury. But the staff there would have the primary responsibility for doing that and doing the work on devising legislative recommendations.

WITHHOLDING ON INTEREST AND DIVIDENDS

Senator SCHMITT. Mr. Kurtz, two weeks ago Secretary Miller in his testimony before this committee stated that Treasury intends to propose withholding on dividends and interest. It appears that this obviously will be another burden on the taxpayer. Whether it is unnecessary or not would be defined, I think, in the course of legislative considerations. Does not your information returns program receive and match information on dividends and information on taxpayer accounts?

Mr. KURTZ. Yes, it does.

Senator SCHMITT. The Secretary, as I recall, used a figure like only 80 percent compliance in interest and dividend income reported.

Mr. KURTZ. Eighty-five to ninety percent.

Senator SCHMITT. Why wouldn't it be 100 percent?

Mr. KURTZ. Because we don't follow through with 100 percent of the documents. There are two problems. No. 1, not all interest is subject to information reporting. There is a significant amount of interest, for example, bearer securities, large classes of Government bonds, private interest, that is not subject to information reporting. Beyond that, we receive and match a large number of documents on interest and dividends which produces a significant number of discrepancies. Our followup on the discrepancies is not 100 percent. That is a budgetary matter. Just as we don't audit all tax returns, we don't follow up on every discrepancy. A matching program would not completely close the gap unless a matching program were followed up by a 100 percent followup effort. Of course, many of the amounts involved are quite small, and it is simply not feasible to send a revenue agent out and conduct an examination for relatively small deficiencies.

Our experience, I might say, with wage reporting and withholding is a much higher rate of compliance, largely because of the withholding elements.

Senator SCHMITT. With the exception of the legal income such as tips and things for which there is no record.

Mr. KURTZ. Exactly. That is right. Where wage income is subject to a withholding tax, as you imagine, compliance is extraordinarily high, 99 percent.

Senator SCHMITT. Yes, there is not much choice there. But where you have choice in the interest and dividend area, you are saying 85 to 90 percent compliance.

Mr. KURTZ. Eighty-five to ninety percent overall compliance.

Senator SCHMITT. Now the records exist for most other interest income; it is just they are not subject to your reporting requirements. Even bearer bonds of that kind, there is a record of the interest paid, right?

Mr. KURTZ. Well, with bearer bond interest in many cases there may not be a record.

Senator SCHMITT. The coupons are clipped and turned in and nobody knows who turned them in. They just know who gets the money.

Mr. KURTZ. There may be a record that exists somewhere in the field in the sense somebody deposited that coupon. But there is in many cases not a centralized compilation of that interest.

Senator SCHMITT. But in terms of a full audit of any taxpayer's return, presumably those kinds of records would show up.

Mr. KURTZ. We would hope on examination they would.

Senator SCHMITT. So the intimidation you might be found out is stronger than it would be for tip income.

Mr. KURTZ. I would hope so.

INTEREST AND DIVIDEND REPORTING

Senator SCHMITT. Do you have good cooperation from the corporations and financial institutions that must comply with the requirement of submitting dividend and interest information?

Mr. KURTZ. By and large, yes.

Senator SCHMITT. Any problems there of any significance?

Mr. KURTZ. There is one set of problems, which is perhaps no one's fault,. We have 1099's, the document for interest and dividends, filed with us by the paying institution, and we find among those documents a higher error rate than among wage documents. It requires the social security number, et cetera, and I think the payors do not go to the payees and say, "We have a problem with that number," because they can't demand compliance by the payee in giving them the number. That is, it is difficult to do. And that causes us to have to correct those internally by manual research, which is a very expensive proposition. Wage documents, on the other hand, have a very high accuracy rate. That is because the person receiving the wage wants to make sure he gets appropriate credit for withholding. So there is an incentive on the payee's part to have the document correct. There is much less incentive in dividend and interest to see that the document is correct. That is reflected in a higher error rate and a more costly problem in the matching.

Senator SCHMITT. Do you have an estimate of what the error rate is in compliance by corporations and institutions?

Mr. KURTZ. Yes. I don't have it here.

Senator SCHMITT. Would you supply that for the record?

Mr. KURTZ. Yes.

ERRORS ON INFORMATION RETURNS

Senator SCHMITT. For the most recent data period available, provide error rates detected on information returns—1099's, 1087's—submitted by corporations, and financial institutions.

Mr. KURTZ. The data is not reported by the categories you identified. However, we do have data relating to errors—defined as invalid or no taxpayer's identification number—with separate identification for wage and nonwage categories. That I will submit for the record.

[The information follows:]

	Nonwage		Wage	
	Volume (millions)	Percent of receipts	Volume (millions)	Percent of receipts
Total receipts	311.2		183.3	
No taxpayer identification number	21.5	6.9	1.1	0.6
Invalid taxpayer identification number	12.4	4.0	6.8	3.7

EXEMPTION FROM WITHHOLDING

Senator SCHMITT. How do you view the potential burden that withholding on interest and dividends would place on Americans who are dependent or partially dependent on dividend interest for their livelihood? I am thinking particularly of retired people.

Mr. KURTZ. Well, the proposal as it now stands does permit anyone who will not owe taxes to file an exemption certificate with the paying institution and become completely exempt from withholding. If you take an elderly couple, who are both over 65, whose income is solely from interest and dividends, maybe social security, they can have up to $7,800 and not be subject to tax at all. That is, they have $3,400, four $1,000 exemptions and a $400 interest and dividend exemption. By and large the elderly people who have interest in that amount would be able to file exemption certificates. There are some who would be somewhat over that line, and if they are only slightly over the line, then they find themselves withholding in an excessive amount. We are considering some further provisions to permit exemptions for people who, while they are subject to tax, would be subject to much less tax than the withholding would produce. It is a very narrow class of people. The withholding is at the 15 percent rate. The lowest tax bracket is 14 percent. So if a person has taxable interest and dividends that exceed the exemption level to any significant extent, they are moving into higher brackets. So at some level the 15 percent will equal what the tax will be anyhow.

I might also say the withholding is at the election of the institution. If you are talking about passbook accounts, for example, they can be withheld only on the last day of the year. So the time difference between the withholding and refund is relatively short. Therefore, the burden that it would impose on people would really be quite small. And these are people, in order to have $7,800 in interest, who have significant assets in the bank.

Senator SCHMITT. But those where there is a compounding on interest——

Mr. KURTZ. Amounts withheld would come out the last day of the year and would not affect the people. It would be optional.

Senator SCHMITT. That is your proposition.

Mr. KURTZ. It would be optional. But to assure you have the maximum return on deposits, they would have to withhold to the last day of the year.

EXEMPTION OUTREACH PROGRAM

Senator SCHMITT. It seems to me this may require a fairly extensive outreach program if it were approved to reach the people to understand they must file the request for exemption and just what that entailed in terms of income reporting. Have you thought what level of activity of outreach that would be?

Mr. KURTZ. I think we would have a high level of activitiy on our own through public media, certainly through the institutions themselves contacting depositors.

Senator SCHMITT. Would you attempt, based on your computer records of level of income, to try to reach every taxpayer?

Mr. KURTZ. That is a distinct possibility. For example, on wage withholdings, every taxpayer who files a tax return which has a refund of more than $200 receives a notice from us saying you ought to look at your wage withholding, it appears that you could reduce, by filing an amended W-4, the amount of overwithholding. We do contact every taxpayer who finds himself in that situation. I don't see why we couldn't have a similar notice on interest and dividends.

PROGRAM COSTS

Senator SCHMITT. Have you examined the total administrative burden on the IRS to administer such a program?

Mr. KURTZ. Yes.

Senator SCHMITT. What do you expect would be required?

Mr. KURTZ. You mean cost?

Senator SCHMITT. Cost on a one-time basis and then a sustained basis.

Mr. KURTZ. It would not be a significant item of cost in this sense, and it may well be it would be a net gain. We do now receive the information documents and do process the information documents and follow them up, so that the additional costs in processing withholding certificates would not be anything. To the extent that we have higher accuracy in those documents and less followup, there would be an affirmative savings. Under withholding, we would have to process the documents accounting for the taxes withheld and deposited paying institutions, and there would be a cost involved in doing that. We are working on figures. I don't have it with me. The last figure, and they are not final ones, which will vary depending on the shape of the bill, but the administrative costs compared to the projected revenue, those are not at all significant.

Senator SCHMITT. Have you made any projections as to the work, manpower and costs to the institutions?

Mr. KURTZ. We have done some rough estimating on that. Again, it would not be very substantial for this reason: almost all of the interest and dividends that would be covered by withholding are now subject to information reporting. Now the addition of withholding to an information reporting system is not a very significant step. Probably the most expensive part of it—again it is not very expensive—would be handling exemption certificates, which is something new that institutions do not have on information reporting. But again the cost is not terribly significant.

Senator SCHMITT. Would you expect the institutions to offer a service in filing the exemption certificates for the individual?

Mr. KURTZ. I think they would work with the individuals, just as in the case of wage withholdings it is the employer who generally answers the questions the employee may have about the withholding.

EFFECT ON SAVINGS

Senator SCHMITT. Have you made any estimate on what effect this would have on the propensity to save?

Mr. KURTZ. The economists at the Treasury Department have estimated none at all.

Senator SCHMITT. Well, I would expect them to. What about economists not in the Treasury.

Mr. KURTZ. It is hard to say that it would have an effect on the propensity to save.

Senator SCHMITT. Well, it is going to be reduced.

Mr. KURTZ. It is a reduced income for those evading this tax.

Senator SCHMITT. It would be a reduced income on anybody not subject to annual reporting.

Mr. KURTZ. It would reduce the incentive for tax evasion.

Senator SCHMITT. I didn't say that. For interest withholding that will occur more frequently than just on December 31, there would be an effect on the rate of return.

Mr. KURTZ. The effect on the rate of return for those who would be over the limit is one-tenth of 1 percentage or less, because you are only talking about the loss of interest on the withheld amount, which is 15 percent of the interest, for the period between the time of payment and the time of refund. People receiving significant interest today, for example, are required to file quarterly statements. So you are not talking about 1 year's difference, only a couple of months, a very small effect.

Senator SCHMITT. Well, I thought Secretary Miller indicated that the effect was a couple billion dollars.

Mr. KURTZ. Couple of billion dollars?

Senator SCHMITT. I will have to go back and check.

Mr. KURTZ. There is a revenue estimate on full implementation of about $2.2 billion a year, but that is compliance.

Senator SCHMITT. That is all compliance?

Mr. KURTZ. Yes, all taxes now due that are not paid.

Senator SCHMITT. And that $2.2 billion is all compliance?

Mr. KURTZ. The $2.2 billion is all compliance. There is in the year of implementation some acceleration effect, and that depends again just on what the terms are and how they are at the year's end.

Senator SCHMITT. Could you provide us with some summary statistical information on the general categories of interest and dividend income relative to the interest of what it would be taxed and how?

Mr. KURTZ. Yes. The Secretary is testifying at the Ways and Means Committee on this subject Wednesday morning, and that testimony will have a fair amount of information of that kind attached to it.

Senator SCHMITT. Maybe you could see the committee gets a copy of that.

Mr. KURTZ. Yes.

[The information follows:]

STATEMENT OF G. WILLIAM MILLER

I am pleased to be here today to discuss the President's proposal for withholding on interest and dividends.

Underreporting of interest and dividend income is no longer a problem that we can afford to ignore. In 1979 taxpayers underreported interest and dividend income by about $16 billion and thereby underpaid their taxes by approximately $3.6 billion. Other taxpayers bear the cost of these lost revenues by paying a larger share of the tax burden.

Balancing the budget is a national priority in the fight against inflation. As we ask the American people to accept fiscal discipline, with cuts in spending for important economic and social programs, we must at the same time take positive action to avoid needless loss to the Treasury of billions of dollars due under present tax laws.

Withholding is not a new tax.

To combat this needless loss to the Treasury, the President has proposed a system of withholding on interest and dividends similar to the current system of withholding on the wages of our nation's workforce, a system that has served us well since 1943. Withholding benefits not only the government, but also benefits taxpayers by providing them with a gradual and systematic way to pay their taxes.

Let me emphasize that withholding is not a new tax. As with wage withholding, withholding on interest and dividends does not increase anyone's tax liability; it only changes the method by which the taxes are paid. The purposes of the withholding program are simple -- to collect taxes due on interest and dividend income and to ensure that all taxpayers report the full amount of their income and pay their fair share of taxes.

It has been strongly argued in recent years that the tax system relies too heavily on taxing savings and investment. This issue is being examined closely. But it cannot plausibly be argued that the way to lighten the tax burden on savings is to facilitate noncompliance with current tax laws.

Compliance is a current problem.

Overall our system of income taxation works very smoothly. It is administered with honesty and integrity and with very low administrative and enforcement costs.

Nevertheless, a recent Internal Revenue Service report on income unreported by individuals clearly indicates that substantial numbers of individuals do not pay the full amount of tax that they owe because they fail to report the full amount of their investment income. The report presents the findings of a year-long study by an Internal Revenue Service task force appointed by the Commissioner to review all available data for the purpose of developing the best possible estimates of unreported income. The report determined that the 1976 gap between taxable interest payments received by individual taxpayers and taxable interest payments reported on individual income tax returns ranges from $5.4 billion to $9.4 billion. The 1976 gap between taxable dividend payments received by individuals and those reported on tax returns is estimated to range from $2.1 billion to $4.7 billion. While individuals are estimated to underreport wage income by only 2 to 3 percent, they omit 9 to 16 percent of interest and dividend income, a rate of noncompliance that is at least 300 percent greater.

As a result of continued substantial noncompliance in the reporting of investment income, about $3.6 billion in taxes that were lawfully due were not collected in 1979. It is estimated that in calendar year 1981 this tax loss will increase to approximately $3.9 billion.

Underreporting of investment income jeopardizes the very cornerstone of our tax system -- self-assessment. The Internal Revenue Service now audits only about 2 percent of individual returns filed each year. Withholding provides a logical means to attain high compliance with low audit coverage.

Information reporting alone is not enough.

Some have suggested that the existing system of information reporting -- or an expanded system -- would solve the reporting problem if only the Internal Revenue Service would do its job. In 1962 the Senate rejected the withholding approach adopted by the House on the ground that improved compliance should first be sought by expanding the information reporting requirements. This has been done.

The intervening eighteen years have provided an ample test of information reporting alone as a compliance measure. The results of the recent Internal Revenue Service report on unreported income clearly indicate that, even with the additional reporting requirements enacted in the Revenue Act of 1962, taxpayers still fail to report and pay tax on significant amounts of taxable dividends and interest for which information reports are filed. Certainly the time has come to reassess how tax should be collected on interest and dividend income and why information reporting alone is not sufficient.

The Internal Revenue Service now matches at least 72 percent of the information documents that it receives on interest and dividends and uncovers several million discrepancies. Much of the nonreporting is apparently due to inadvertence, forgetfulness and failure to keep records, particularly by taxpayers who receive relatively small amounts of dividend and interest income. Other nonreporting is due to nonfilers who owe some tax but who are difficult to trace. Because of the small amount of revenue to be gained from any one taxpayer, the cost of following up the millions of discrepancies is demonstrably uneconomical. Even extensive pursuit of taxpayers would not achieve full collection of unpaid taxes. There would be many unfruitful investigations where taxpayers cannot be reached by telephone or traced if they have moved. Even after the taxes have been assessed, it would be impossible or uneconomical to collect them.

The present situation, then, is that the Internal Revenue Service uncovers many more leads through its matching program than it pays to pursue. To follow up on all of these leads would require millions of telephone calls, letters and visits, and audit efforts concentrated on individuals. This would inevitably be regarded as harassment of "little people" and would require shifts in staffing that would prevent the Service from directing its limited resources towards auditing compliance areas that are not susceptible to withholding.

Withholding is now necessary.

How will withholding help? A substantial portion of the taxes that now go unpaid will be collected without costly audit procedures. Not only will withholding automatically collect much of the tax owed, but people will have more incentive to pay the remainder of their taxes due if part of their taxes have already been paid. The Service will be able to channel its audit resources to those areas where they are most needed and that best serve the public -- the complicated returns of corporations, partnerships and sophisticated high-bracket individuals.

The Administration expects that withholding will also increase the accuracy of information being submitted to the Internal Revenue Service, thereby reducing the cost of reconciling discrepancies on returns. Since taxpayers will receive credit for withheld tax, they will have a positive incentive to supply payors with better information. Likewise, taxpayers will be less likely to lose or forget about their dividend and interest reports if these reports must be attached to the return in order to claim the credit. Information reporting alone provides no such incentives. The Internal Revenue Service estimates that more than 11 percent of information returns required to be filed by payors (Form 1099's) have inaccurate or missing Social Security numbers (taxpayer identification numbers), making accurate matching of documents in such cases extraordinarily expensive. By comparison, the rate of error on information returns for wages (Form W-2), where the taxpayer is entitled to a credit for the taxes paid, is estimated to be about 3 percent.

Experience with wage withholding has proven that withholding is the most effective means of ensuring compliance in the reporting of income. Wage-earners now pay their taxes on a regular basis through withholding. Information reporting and the system of estimated tax payments simply have not been as effective. There is no reason why recipients of dividends and interest should not be held to the same standards of withholding and compliance that are set for wage-earners.

Summary of the proposal

Under the President's proposal, 15 percent will be withheld on taxable dividends and interest paid to individuals with respect to deposits and securities of a type generally offered to the public. Most dividend and interest income is currently subject to information reporting; the proposal builds primarily upon the system that is now in place. The proposal also will extend withholding to instruments with respect to which reporting is not currently required, including obligations of the U.S. government, such as Treasury bills, as well as corporate coupon bonds and government agency issues.

Payments to corporations (including corporate nominees and corporate trustees) and noncorporate securities dealers will be exempt from withholding. This exemption simplifies the withholding system administratively. Moreover, there are other safeguards to prevent noncompliance by these entities, such as normally higher audit coverage by the

Internal Revenue Service. Exempt recipients will include banks and thrift institutions, regulated investment companies, collective investment funds managed by banks, money market funds and the like. All of these entities will, however, be required to withhold upon the payment of dividends or interest to their non-exempt customers, shareholders, or certificate holders.

Exempt organizations and individuals who reasonably believe they will owe no tax will not be subject to withholding if they file exemption certificates with the withholding agent. Furthermore, the proposal will be designed to minimize overwithholding and the period during which a taxpayer is owed a refund.

Under the proposal, it is estimated that tax collections for calendar year 1981 will increase by $2.1 billion and $2.3 and $2.6 billion in 1982 and 1983, respectively.

A detailed description of the proposal will be provided in a separate technical explanation.

This proposal is different from the 1962 proposal.

The President's proposal meets the objections that were raised to the proposal offered in 1962.

Although any withholding system will have complexities, the present proposal has been designed with simplicity and administrative ease in mind. Much of the complexity of the 1962 proposal stemmed from the level at which withholding was made. The present proposal designates as the withholding agent the entity that has the best information to determine the status of the recipient of the investment income. This approach, although more decentralized, makes exemptions easier to administer and more closely parallels the wage withholding system.

Since 1962, the computer age has advanced us far along the road to solving administrative problems. As with the current information reporting system, taxpayers will receive reports showing the amount of investment income payable to them and the amount of tax withheld. They will not have to determine for themselves, as they would have in 1962, whether the amount of dividends and interest received was net of withholding or not.

Perhaps, in retrospect, installing a reporting system was the expedient approach in 1962. But in 1980, withholding is feasible and practical -- as well as useful in the effort to balance the budget.

Criticisms of the proposal

Despite the advantages of withholding, the proposal has been subject to some criticism. I would like to comment briefly on the main objections that have been raised.

Cost to withholding agents

One objection is that withholding agents will incur additional administrative costs. Eighty-seven percent of the interest and dividends covered by the proposal is already subject to information reporting. For these, withholding agents need only add the amount of withheld tax to the reporting statement, remit the withheld tax to the Internal

Revenue Service, and adjust the payments to the payee accordingly. Although withholding will be extended to instruments for which there is now no reporting, most of them are bearer securities held by corporations, and corporate recipients are exempt under the proposal.

Naturally there will be some start-up costs associated with adding withholding -- there are always costs when an existing system is modified. But with a reporting system largely in place, we do not anticipate high continuing costs of the system to withholding agents.

The principal new cost will result from the exemption system. In recognition of this, exemption certificates will be permanent until they are revoked.

Overall, however, withholding is a far better way to collect taxes than is an increase in the number of audits, record checks, and collection attempts by the Internal Revenue Service. All taxpayers would bear the cost of increased audit coverage through the higher taxes needed to pay for the personnel and equipment necessary to conduct thorough examinations of more returns. Perhaps more importantly, taxpayers would suffer the loss of privacy from more frequent audits, record checks and requests for detailed information. The success of the wage withholding system indicates that taxpayers prefer withholding as a way to pay their taxes.

Overwithholding

Some are worried that low-income taxpayers, particularly certain senior citizens who depend on interest and dividend income, will be overwithheld. The proposal will exempt individuals if they reasonably expect that they will owe no tax. This means that 70 percent of the senior population will be entirely exempt.

To deal with other problems of overwithholding and to contain the costs of instituting the withholding system within reasonable bounds, the Secretary will be given authority to provide additional individual exemptions by regulation. For example, the regulations could provide an exemption for married couples filing jointly who are at least age 65 and for whom, in both the prior year and the current year, interest and dividend income does not exceed a stated amount, such as $15,000, and total tax liability does not exceed 10 percent of their investment income.

Other individuals who incur tax liability will be able to reduce their estimated tax payments to take account of the tax withheld on their interest and dividends, including interest and dividends that are eligible for the exclusion provided by the Crude Oil Windfall Profit Tax Act. Wage-earners will be able to adjust for tax withheld on interest and dividends that are eligible for the exclusion by reducing the amount of tax withheld from their wages.

Depositary institutions will be permitted to withhold once at the end of the year on passbook accounts so that a taxpayer may apply for a refund shortly after the tax is withheld.

Impact on savings

Withholding does not change savings incentives for individuals who now comply with the tax laws. Any argument that the tax system should encourage people to save by offering them opportunities to underreport their income must be rejected out-of-hand. Savings incentives in the form of opportunities for evasion promote inequity, undermine the integrity of the tax system, and are a grossly inefficient means of encouraging savings.

Some argue that the proposal will discourage savings by reducing the yield on savings. This argument confuses a change in the method of paying taxes, such as through withholding, with a change in the overall level of taxation. If taxes are withheld, the amount withheld becomes a credit that taxpayers can claim against their final tax liability. Taxpayers may then adjust their estimated tax payments or simply reduce the balance due at the time that they file their returns.

Even if a taxpayer decides to make no adjustment during the year, he or she will only lose interest on the amount of tax that would not have been paid as early in the year if there were no withholding. Since the withheld tax on interest paid on a typical savings account averages less than one percent of asset value over the course of the year, at worst the "loss" of interest on the withheld tax would be less than one-tenth of one percent of asset value. Moreover, most of this loss will be avoided if withholding on passbook-type accounts occurs only at year end, rather than quarterly.

Thus, the argument that savings will be adversely affected by this proposal is grossly overstated. Inflationary expectations and restricted yields on passbook savings have been the principal savings disincentives in recent years. Congress, with the full support of the Administration, has already acted to lift interest ceilings through the phase-out of Regulation Q. Current economic problems should not lead us to advocate lower compliance with the tax laws as a policy for increasing savings.

Conclusion

Withholding on wages proves that withholding is the most economical way to achieve high levels of compliance in the payment of taxes. The Administration's proposal for withholding on interest and dividends will impose minimal burdens on withholding agents. It will also protect individuals with little or no tax liability.

Congress and the Administration have at all times a joint responsibility to make certain that the Federal government collects all taxes due it. In this period of fiscal austerity, we can ill afford the needless loss of billions of dollars in taxes that are not being paid on interest and dividends. Withholding on investment income is the most sensible and effective answer to this major compliance problem.

ORIGIN OF PROPOSAL

Senator SCHMITT. Did this proposal start with the Treasury level economists or did it start within the IRS?

Mr. KURTZ. Treasury.

TAXPAYER OMBUDSMAN

Senator SCHMITT. You have brought your taxpayer ombudsman, Mr. Browning.

Mr. KURTZ. Yes.

Senator SCHMITT. Could you explain the function of this position and what has been done with it in the past year?

Mr. KURTZ. Yes. Maybe I should explain the history of how it came into being.

Senator SCHMITT. I always thought Congressmen and Senators were ombudsmen for the taxpayers.

Mr. KURTZ. Well, we are trying to relieve you of some of your burden.

Senator SCHMITT. Excuse me for interrupting.

Mr. KURTZ. About 4 years ago, the staff started, on an experimental basis, a position called a problem resolution officer, a position in a few districts, as I say on an experimental basis. The job was to handle those taxpayer problems that seemed to fall between the cracks in the administration of the tax system. As you know, we handle an enormous amount of paper. We do an extremely high percentage of it accurately the first time. But even a small percentage of the amount of material we handle leaves a lot of people aggravated.

Senator SCHMITT. I might say it may be because people have gotten used to going to legal remedies for tax problems. But my office at least deals with far more social security problems than we do tax problems. I don't know if it is because you are doing a good job or they don't contact their Congressman or Senators, but go to court.

Mr. KURTZ. No, there aren't enough of them in the courts to account for that difference.

We established this position and it worked very well. We expanded in 1977 to every district. There are instructions out to all service personnel that if any taxpayer calls with a problem—they are largely problems with billing, failure to get a refund check, amounts not credited right on their account and if they have called the Service once before and couldn't get it straightened out, in other words this is the second call, it goes to the problem resolution officer. The problem resolution officer has a responsibility, with staff, to follow up, contact the taxpayer, to cut through the system and get the problem resolved, to do it in a limited period of time and keep the taxpayer involved and have written followup to make sure everything does get done. We have had a very high rate of success in that operation.

The significant problem we have had with it to date has been that it is not getting at all the cases it ought to get, that is, in terms of people knowing that it exists.

Harold Browning was appointed as the first taxpayer ombudsman, which put the entire problem resolution function under a separate senior Internal Revenue Service officer who is responsible directly to the Commissioner's Office to manage this program and to act as the advocate of the taxpayers' interests in areas of form design, notices, and to run this program and to consult with other branches of the Service to straighten out the causes of the problems of this kind. Our hope is with that increased management attention and increased public visibility that the program will become more successful.

Senator SCHMITT. Does Mr. Browning have all of his staff in Washington?

Mr. KURTZ. Maybe I ought to ask Mr. Browning to join us at the table and respond to that.

Mr. BROWNING. I have a staff here in Washington, but the program is decentralized down to the local level.

Senator SCHMITT. How far down?

Mr. BROWNING. Each district director's office has a problem resolution officer on the staff of the director. There may be more than one person on the staff, but the one person who heads up the staff is the problem resolution officer.

PROBLEM RESOLUTION PROGRAM RESOURCES

Senator SCHMITT. What is the total of the staff in the pyramid?

Mr. BROWNING. In terms of those formally assigned to the program, 188 people in all.

Senator SCHMITT. How many of those in Washington?

Mr. BROWNING. Thirteen.

Senator SCHMITT. Thirteen here?

Mr. BROWNING. Yes.

Senator SCHMITT. Excuse me for interrupting.

Mr. BROWNING. Of the staff there are 188 formally assigned to the program. But the way the program works, in addition to the individual in the problem resolution office resolving the case, they will put cases under control and return them back to the functional area of where the problem is—for example: examination, collection. And there are approximately 350 staff years that are involved in resolving these problems.

Senator SCHMITT. 350 staff years?

Mr. BROWNING. Yes.

Senator SCHMITT. Do you have a formalized tracking system by which once an ombudsman case gets into the mill you track it to make sure it doesn't fall through the cracks?

Mr. BROWNING. Yes; when the problem is identified as a problem resolution case, a control form is immediately prepared on the case. The taxpayer's problem is resolved within 5 days or the taxpayer is contacted within 5 days if it couldn't be resolved. There is a chronological log kept of every contact to make sure it doesn't fall in a crack.

Senator SCHMITT. What do you estimate the cost of this program is on an annual basis?

Mr. BROWNING. I don't have that figure available.

Senator SCHMITT. You can supply that for the record.

Mr. **Browning.** Yes.

[The information follows:]

Problem Resolution Program Resources Fiscal Year 1981

The cost of the 188 staff years that are directly associated with the problem resolution program for fiscal year 1981 is approximately $4 million.

Senator **Schmitt.** Does this year's budget contain any increase or decrease in the staff or budget for the office?

Mr. **Kurtz.** We have funded that whole effort through the taxpayer service appropriation. That does not represent additional funding.

PROGRAM STATUS

Senator **Schmitt.** Internally do you anticipate this will stay at this level of effort?

Mr. **Kurtz.** We anticipate it will grow significantly. Then our hope is it will get smaller. One of the very important functions of the office is to compile information on where taxpayers are having problems and try to sort them out at the beginning so they don't recur. That is, we see problems that arise as a result of a computer programing error in a particular type of transaction. We learn that because we see several dozen taxpayers coming forward with that. Part of the function of this office is to deal with programs to get problems corrected. This happens in large numbers of situations. So right now the program is rising in visibility. It is attracting more problems, which is what it is designed to do, and staffing will inevitably increase. Our hope is that as those systemic problems get resolved, it will be able to settle down to a smaller permanent staff.

PROBLEM RESOLUTION PROGRAM WORKLOAD TRENDS

Senator **Schmitt.** Can you provide us with some preliminary statistical information on the activities of the office, how many cases on an annual basis you have dealt with and what the trends are?

Mr. **Kurtz.** Yes.

Mr. **Browning.** The receipts of problem cases identified last fiscal year were 79,000. The first quarter of this fiscal year we had 35,000. Then the quarter ending in March there were 51,000. So we have a total number of cases identified so far this fiscal year of 86,000.

As for trends, the largest category of complaints received involve delayed, missing or stolen tax refunds. Other common complaints concern billing and payment problems and the failure of IRS to respond properly or completely to taxpayer inquiries.

Senator **Schmitt.** So it looks like word is spreading that you exist.

Mr. **Browning.** Yes.

Senator **Schmitt.** Have you mailed to every taxpayer and told them you exist or are you just dependent on the word spreading at a rate you can handle?

Mr. **Browning.** There are two ways it is being handled. Number one is through publicity. Newspapers have been very positive about this program and supportive in getting the word out to their readers. The second is within the organization, that when a taxpayer tries to get in, makes that second contact to get that same problem resolved, then employees are being trained that this is a problem resolution case they are supposed to refer to the problem resolution officer.

Mr. KURTZ. The primary source of referral is our own people. They are the ones who get in contact with the taxpayer. This is now mandatory that on the second contact the problem be referred. We look at the great increase in work of the problem resolution officer not as a fact we are having a problem, but as a mark of success for the office.

Senator SCHMITT. Your people are starting to understand that is what they are supposed to do.

Mr. KURTZ. Yes.

GOVERNMENT DEBT COLLECTION

Senator SCHMITT. Mr. Kurtz, in recent months a number of articles have appeared in newspapers pointing out the IRS is not cooperating with law enforcement agencies combatting organized crime. I think we covered that subject pretty well at our first hearing. I don't understand, I guess, where the IRS is not cooperating with other agencies in the apprehension and conviction of major criminal activity, which there have been some accusations is occurring, but is utilizing its collection powers for individuals who have failed to make child support payments, that is delinquent child support payments, which are collected by IRS rather than through normal non-IRS procedures. Earlier this year the IRS refused to take a position on the proposal to expand the current Federal policy of only collecting delinquent child support for those families receiving aid under the AFDC program to all delinquent child support cases. Now at the time last year when I was opposing the extension of the IRS as a small debt collector with respect to student loans, you were quite supportive of that position. You did not feel, and publicly said you did not feel, that the IRS should be in the business of a small debt collector for the Federal Government. At that time I didn't realize you were in the business of a small debt collector for the AFDC program. Why couldn't we get you to take a position against the expansion of IRS powers?

Mr. KURTZ. My positions don't always prevail, just as the administration's position doesn't always prevail.

Senator SCHMITT. Is that still the situation? Do you think it is appropriate for the IRS to gradually expand into collecting delinquent debts other than those that are a tax liability?

Mr. KURTZ. No, I think it is completely inappropriate for us to be in that business.

Senator SCHMITT. We apparently are going to face that issue this year in a proposal to make the IRS the national debt collector across the board, and no longer are we satisfied with student loans or veterans' programs or aid to families with dependent children. But the proponents of the IRS as a debt collector are actively soliciting support for making the IRS generally a debt collector. Do you think we can expect the administration to oppose that effort?

Mr. KURTZ. I certainly hope so.

Senator SCHMITT. I thank you for your frankness. So do I. I think you have your hands full and that is probably not the best way to do it. I presume that you feel partly, as you did before, that to become engaged in debt collection is like having the Service caught in the middle between the debtor and the agency owed the debt.

EFFECT ON VOLUNTARY COMPLIANCE

Mr. KURTZ. That is part of the problem. Another part of it is that it consumes resources of ours that are very scarce. Our fear is it will create a disincentive to voluntary compliance with the tax laws to the extent that taxpayers are aware that voluntary compliance may bring other forces to bear for debts or whatever. Gaining high voluntary compliance is a hard enough job without saddling it for collecting small debts for the rest of the Government.

Senator SCHMITT. How do you counter the arguments we heard last year in connection with the child support issue, that you have done so well in AFDC collections, therefore you could do well in other areas?

Mr. KURTZ. The price of success I suppose. But there are unknowns in that equation. In the hearings last year on debt collection the point I tried to make was that there is little doubt if we were assigned a lot of debts to collect, we would collect them, by offset of refund or one thing or another. But the other unknown is what will it do to tax compliance if the number of debts collected is small compared to the total taxes collected? We have a tax collection system that involved $500 billion, and anything that would adversely affect that tax collection mechanism would simply swamp the debt collection program in terms of revenue that could be gained. So what one can look at here is $1 billion in debts the IRS would collect, yes, but at what price to the voluntary compliance system. That is the risk that concerns me more than any other.

Senator SCHMITT. Do you have any empirical data to indicate that there has been a loss of compliance as a result of your activities to date?

Mr. KURTZ. No. It is too small, and we do not have reliable information on overall compliance trends. And even if we did, sorting out motives would just be extraordinarily difficult.

Senator SCHMITT. In the child support area you are probably generally dealing with nontaxpayers anyway, the AFDC ones at this point.

Mr. KURTZ. I don't know. I don't know if we have information on that or not.

Senator SCHMITT. Well, to qualify for AFDC means you are at an income level below the taxable level.

Mr. KURTZ. This is collection against the runaway father. So the runaway father, he may or may not have taxable income. The fact that the spouse and child qualify is not an absolute indicator of income levels.

Senator SCHMITT. We will try to protect you. Whether we can or not I don't know.

Mr. KURTZ. Thank you.

LITIGATION INCREASES

Senator SCHMITT. In your testimony you mentioned "a continued uncontrollable increase in cases in litigation." Would you explain more about that problem and why this situation is uncontrollable?

Mr. KURTZ. Well, it is uncontrollable in the sense that taxpayers have a right to file a petition in the Tax Court if they don't agree with a position that the Service has taken in examination and the case is not resolved through the appeals process, or the taxpayer chooses not to go to the appeals process. The filing of petitions in the Tax Court is at the election of the taxpayer, and we have seen an increase in that.

Senator SCHMITT. Does this argue for a much simplified Tax Code?

Mr. KURTZ. I think it does.

Senator SCHMITT. Is there any other way to gain control of the movement of taxpayers into the court?

Mr. KURTZ. We try through our internal appeals system, which is available to taxpayers, to resolve controversies at that level, and have a very high rate of success. We resolve about 80 percent of all controversies in our internal appeals process, and we press to keep that percentage as high as possible. But in the end taxpayers are free to go to Tax Court.

Senator SCHMITT. Could you provide us with the number of cases that went to litigation in the past year and the number of decisions favorable to the Government versus those favorable to the taxpayer?

Mr. KURTZ. Yes.

Senator SCHMITT. Can you give us some general figure of what the annual rate is?

Mr. KURTZ. We usually win a high percentage of the cases.

Mr. STEIN. I guess it is in the 70-percent range.

Senator SCHMITT. And how many cases have you won on an annual basis?

Mr. STEIN. Senator, I am not in charge of litigation.

Senator SCHMITT. You can provide that.

Mr. STEIN. I will.

But you will get figures in these categories, those in which the Government has won 100 percent, where the Government has a partial win, and then where it lost. There is a range. In other words, there are cases where we don't win every dollar that we allege the taxpayer owes, but we do win, in part, often after the Government has conceded or settled some of the adjustments before litigation. But we will give you those figures.

[The information follows:]

LITIGATION RESULTS—TRIAL COURT CASE RECORD

(Opinions rendered-refund litigation and tax court cases)[1]

Action	Court of Claims		District courts		Tax Court[6]					
					Small tax cases		Other		Total	
	1978	1979[2]	1978	1979[3]	1978	1979[4]	1978	1979[5]	1978	1979
Decided in favor of Government:										
Number	30	20	216	146	262	347	271	325	533	672
Percent	63.8	50.0	62.8	60.3	54.0	55.2	47.9	49.8	50.7	52.5
Decided in favor of taxpayer:										
Number	12	15	90	69	50	62	66	65	116	127
Percent	25.5	37.5	26.2	28.5	10.3	9.9	11.6	10.0	11.0	9.9
Decided partially for taxpayer and partially for the Government:										
Number	5	5	38	27	173	219	229	262	402	481
Percent	10.6	12.5	11.1	11.2	35.7	34.9	40.5	40.2	38.3	37.6
Total opinions	47	40	344	242	485	628	566	652	1,051	1,280

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[1] Related cases are reflected as one opinion.
[2] 40 opinions in Court of Claims involving 42 cases.
[3] 242 opinions in District Courts involving 266 cases.
[4] 628 Tax Court opinions involving 653 small tax cases.
[5] 652 Tax Court opinions involving 837 cases other than small Tax Court cases.
[6] On cases for which decisions were etnered during the fiscal year.

APPELLATE COURT CASE RECORD

[Decisions-refund litigation and Tax Court cases]

Court	Total	For the Government		Against the Government		Partly for and partly against the Government	
		No.	Percent	No.	Percent	No.	Percent
Courts of Appeals	189	144	76.2	34	18.0	11	5.8
Originally tried in Tax Court	[1] 113	94	83.2	10	8.8	9	8.0
District Courts	[2] 76	50	65.8	24	31.6	2	2.6
Supreme Court	3	2	66.7	1	33.3		

[1] Of the cases originally tried in Tax Court, the Tax Courts of Appeals rendered 113 opinions in 158 dockets, including 120 dockets for the Government, 15 dockets against the Government, and 23 dockets partially for the Government.

[2] Of the cases originally tried in District Courts, the Courts of Appeals rendered 76 opinions in 91 cases, including 59 cases for the Government, 27 against the Government, and 5 partially for the Government.

Source: *1979 Annual Report of the Commissioner of Internal Revenue, pp. 41, 42.*

Senator SCHMITT. Is there any influence on the recent increases in cases resulting from the high interest rates?

Mr. KURTZ. We can't tell as to why taxpayers are litigating in cases. You mean market interest rates?

Senator SCHMITT. Yes; in terms of borrowing money to pay the tax collector.

Mr. KURTZ. Now our own interest rates February 1 went up to 12 percent. So while it is a difference, it is not as severe as it was.

AWARDING ATTORNEY FEES

Senator SCHMITT. In terms of the question I asked last year about awarding attorneys' fees in tax cases which are decided in favor of the taxpayer, your response then was not very favorable. I presume you have not changed your opinion.

Mr. KURTZ. We have supported a bill which would award attorneys' fees on successful litigants in tax cases subject to a ceiling amount and where there was a finding that the Government's action was arbitrary or unreasonable.

Senator SCHMITT. And that would apply to cases brought by the Government?

Mr. KURTZ. Either way. There was a hearing before I believe it was Senator Baucus's oversight subcommittee of the Finance Committee on that issue.

Senator SCHMITT. You have supported it. But won't that have a tendency to increase the number of litigated cases also?

Mr. KURTZ. It is possible, although we think the increase will be very small. We don't feel we ever act unreasonably.

Senator SCHMITT. I wish you could convince my constituents of that.

Mr. Kurtz, I want to thank you for your being up here this morning one more time. I will have a few more questions for the record which I think can be answered for the record. One of them is a followup to my inquiry last year about fraudulent tax refunds, which we will ask you for updated statistics on that, and whether you think you are gaining on that.

Mr. KURTZ. We would be pleased to submit it.
[The information follows:]

FRAUDULENT REFUND SCHEMES

Below is a schedule which includes statistics on the number of fraudulent refund schemes detected during the calendar years 1978 and 1979 and the results of our Criminal Investigation Division program directed at such schemes.

QUESTIONABLE REFUND PROGRAM

	Schemes detected	Number returns	Dollar refunds claimed	Dollar refunds deleted	Percentage deleted
Calendar year:					
1978	512	3,316	3,973,313	3,383,719	85
1979	404	1,775	1,993,168	1,732,552	87

CRIMINAL INVESTIGATION DIVISION ACTIVITY IN QUESTIONABLE REFUND PROGRAM

Action	Fiscal year	
	1978	1979
Investigations initiated	243	286
Investigations completed	260	224
Prosecutions recommended	162	152
Indictments/informations	110	81
Total convictions	88	79
Sentenced	83	71

SUBCOMMITTEE RECESS

Senator SCHMITT. Thank you again, you and your staff. You have done an excellent job. We will keep harping on you, but keep trying.

The subcommittee will stand in recess until 10 a.m. tomorrow morning.

[Whereupon, at 12:05 p.m., Monday, April 29, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, April 29.]

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

TUESDAY, APRIL 29, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 1318, Everett McKinley Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Present: Senator DeConcini.

OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF ALAN K. CAMPBELL, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

ACCOMPANIED BY:

JULE SUGARMAN, DEPUTY DIRECTOR
JAMES GREGG, ASSOCIATE DIRECTOR, WORKFORCE EFFECTIVENESS AND DEVELOPMENT GROUP
SALLY GREENBERG, ASSOCIATE DIRECTOR, EXECUTIVE PERSONNEL AND MANAGEMENT DEVELOPMENT GROUP
GARY NELSON, ASSOCIATE DIRECTOR, COMPENSATION GROUP
NORMAN BECKMAN, ASSISTANT DIRECTOR, OFFICE OF INTERGOVERNMENTAL PERSONNEL PROGRAMS
EDWARD SCHROER, DIRECTOR, OFFICE OF PLANNING AND EVALUATION
CHRIS SALE, BUDGET OFFICER

BUDGET REQUEST

Senator DECONCINI. Good morning. The subcommittee will come to order.

This morning the subcommittee will receive testimony from the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority, the U.S. Tax Court and several public witnesses on a variety of subjects within the funding jurisdiction of this subcommittee.

While it is our hope to hear all the public witnesses who are scheduled to testify this morning, that may not be possible because of time constraints. Any public witness who we are unable to hear this morning is invited back tomorrow morning at 10 a.m. in this room to present testimony. If anyone is unable to return tomorrow morning, the subcommittee will review and consider your statement, and it will be inserted in the record if you make that request. I apologize for the inconvenience this may cause any of the public witnesses, but because of the time limitations the situation may be unavoidable.

The committee will begin this morning by receiving testimony from the Office of Personnel Management regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $12,795,906,000 and 6,642 permanent positions have been requested for fiscal year 1981 and $382,735,000 has been requested for the fiscal year 1980 supplemental. Of the $12.8 billion requested for 1981, $12.5 billion is for the civil service retirement and insurance programs. The remaining $225 million includes $20 million to fund the Intergovernmental Personnel Act grant program, with the balance of these funds for agency salaries and related expenses.

The committee is pleased to have Alan K. Campbell, Director of the Office of Personnel Management, with us today to present the testimony in support of the request.

PREPARED STATEMENT

Mr. Campbell, welcome, and if you would introduce your colleagues with you, your full statement will be printed in the record. If you will highlight that for us, please proceed.

[The statement follows:]

STATEMENT OF ALAN K. CAMPBELL

Good day gentlemen. My colleagues and I are here this morning to discuss the Office of Personnel Management's budget request for fiscal year 1981.

Before I begin allow me to introduce my colleagues. Mr. Jule Sugarman, Deputy Director; Mr. James Gregg, Associate Director of the Workforce Effectiveness and Development Group; Ms. Sally Greenberg, Associate Director of the Executive Personnel and Management Development Group; Mr. Gary Nelson, Associate Director of the Compensation Group; Mr. Norman Beckman, Assistant Director of the Office of Intergovernmental Personnel Programs; Mr. Edward Schroer, Director of the Office of Planning and Evaluation; and Ms. Chris Sale, Budget Officer.

Our fiscal year 1981 budget presents a program which builds upon the progress we have made since the establishment of the Office of Personnel Management and the passage of the Civil Service Reform Act. In that time we have broken new ground in the areas of the senior executive service, merit pay, performance appraisal, and minority recruitment. The OPM has provided seed funding for a productivity program and for research and demonstration projects. In doing so the OPM has made progress toward the deregulation and decentralization of personnel management authorities while simultaneously developing special programs to assist agencies with specific problems in personnel management and general management. Accomplishments in these areas provide a solid base for improved public management under the reform initiatives.

In fiscal year 1981, we are proposing to build upon this base by expanding the current efforts to improve the productivity of the Federal workforce. The initiatives presented in this budget are all designed around that central focus: the pursuit of improvements in the productivity of the public sector. In fiscal year 1981, we propose to develop a meaningful Federal productivity program; to provide technical assistance to State and local governments in the area of productivity; to provide Federal executives and managers with the tools and skills they need to assure higher levels of productivity; and to expand the OPM's research and demonstration program into a greater number of priority personnel management issues leading to improvements in personnel management. In addition to these initiatives, we will expand our evaluation of the implementation of the Civil Service Reform Act and its effect on employees, Government operations, and agency mission accomplishment. I genuinely believe that these efforts are critical to the successful accomplishment of our objective to improve the delivery of Government services through management improvement and they represent a cornerstone in this Nation's fight to regain control over our spiralling inflation and our rapidly sagging economy.

Our fiscal year 1981 budget request totals $12.8 billion in Federal funds, an increase of approximately $1 billion over fiscal year 1980. Over 99 percent of this increase and 98 percent of the total request will be used to pay the retirement and insurance benefits of Federal workers. The $12.8 billion includes over $12.5 billion for the civil service retirement and insurance programs, of which $3.5 billion is appropriated and $9 billion is provided under permanent indefinite authorization. The budget also proposes legislation to annualize retirees' cost of living adjustments and for the proration of the first cost of living adjustment.

The remaining $255 million represents $38 million to be transferred from the trust funds to administer the retirement and insurance programs; $75 million to provide reimbursable services for other services; $20 million to fund the Intergovernmental Personnel Act grant program; and $122 million in direct salaries and expenses appropriations to finance the OPM's operating programs.

The fiscal year 1981 salaries and expenses appropriation request represents an increase of only $3.5 million over the comparable fiscal year 1980 amount including the supplemental now requested to finance the October 1, 1979 comparability pay adjustment. I am convinced that this small investment will multiply itself many times over in benefits to be derived by the public from improved Government services.

As I mentioned earlier, the large sums that are requested by the OPM to be appropriated are necessary to make required payments to the retirement and insurance trust funds. Administering these trust funds will require that we process 383,000 annuity, disability, death, refund and deposit claims, and answer 800,000 inquiries in fiscal year 1981. These programs will cover approximately 1.8 million annuitants and 4.5 million participants in the retirement and disability program; 3.5 million participants—active and retired—in the Federal employees life insurance program; and 3.8 million participants—active and retired—in the employees health benefits program. In fiscal year 1981 the OPM will develop and implement major automated improvements to the retirement operation's system which will increase the effectiveness and efficiency in our provision of timely service to annuitants.

This concludes my opening remarks on our budget request. My colleagues and I will be happy to answer any questions you may have on these or related matters.

Thank you.

INTRODUCTION OF ASSOCIATES

Mr. CAMPBELL. Thank you very much, Mr. Chairman. It is a pleasure to be here, and I am pleased to introduce my colleagues. Beginning on my left, Chris Sale, who is the Budget Officer of the agency; Jim Gregg, who heads up our Workforce Effectiveness and Development Group; Gary Nelson, who is head of the Compensation and Retirement part of the agency; Deputy Director Jule Sugarman, Ed Schroer, who is head of the Office of Planning and Evaluation; Sally Greenberg, head of Executive Development in the agency and the Senior Executive Service; and Norman Beckman, head of Intergovernmental Programs.

Senator DECONCINI. We welcome all of you here today.

THE OFFICE OF PERSONNEL MANAGEMENT

Mr. CAMPBELL. I would like to review just briefly the 1981 budget request of the Office of Personnel Management. We have, we believe, broken new ground in a variety of areas as a result of the Civil Service Reform Act, including the Senior Executive Service, merit pay, performance appraisal, and minority recruitment. The Office of Personnel Management has initiated funding for a productivity program and for research and demonstration projects. In doing so, we have made progress toward the deregulation and decentralization of personnel management authorities, while simultaneously developing special programs to assist agencies with specific problems in personnel management and more general management issues.

Accomplishments in these areas, we believe, provide a solid base for improvement in public management in the Federal Government and in the productivity of the Federal workforce. In fiscal year 1981 we are proposing to build on this base by expanding the current efforts to improve productivity and management in general. The initiatives presented in this budget are all designed around that central focus; that is, the improvement of management and productivity. In fiscal year 1981, we propose to develop a new and stronger productivity program to provide technical assistance to State and local government in this area; to provide Federal executives and managers with the tools and skills they need to assure high levels of productivity; and to expand our research and demonstration program into a greater number of priority personnel management issues which we believe will lead to improvements in this field.

In addition to these initiatives, we will expand our evaluation of the implementation of the Civil Service Reform Act and its effect on employees, Government operations, and agency mission accomplishment. I believe these efforts are critical to the successful accomplishment of our objective to improve the delivery of Government service through management improvement, and thereby to make a contribution toward dealing with the country's sagging economy and our spiraling inflation.

BUDGET REQUEST

Our fiscal year 1981 budget request totals $12.8 billion in Federal funds, an increase of approximately $1 billion over fiscal year 1980. Over 99 percent of this increase and 98 percent of the total request will be used to pay the retirement and insurance benefits of Federal workers. The $12.8 billion includes over $12.5 billion for the civil service retirement and insurance programs, of which $3.5 billion is appropriated and $9 billion is provided under permanent indefinite authorization. The budget also proposed legislation to annualize retirees' cost-of-living adjustments and for the proration of the first cost-of-living adjustment.

The remaining $225 million represents $38 million to be transferred from the trust funds to administer the retirement and insurance programs; $75 million to provide reimbursable services for other services; $20 million to fund the Intergovernmental Personnel Act grant program; and $122 million in direct salaries and expenses appropriations to finance our operating programs.

The fiscal year 1981 salaries and expenses appropriation request represents an increase of only $3.5 million over the comparable fiscal year 1980 amount, including the supplemental now requested to finance the October 1, 1979, comparability pay adjustment. I think that is a small increase and represents an investment which will multiply itself many times over in benefits to be derived from the improved delivery of Government services.

As I mentioned earlier, the large sums that are requested by us to be appropriated are necessary to make required payments to the retirement and insurance trust funds. Administering these trust funds will require that we process 383,000 annuity, disability, death, and refund and deposit claims, and answer 800,000 inquiries in fiscal year 1981. These programs will cover approximately 1.8 million annuitants and 4.5 million participants in the retirement and disability program; 3.5 million participants—active and retired—in the Federal employees life insurance program; and 3.8 million participants—active and retired—in the employees health benefits program. In fiscal year 1981, the OPM will develop and implement major automated improvements to the retirement operations system which will increase the effectiveness and efficiency in our provision of timely service to annuitants, a problem we currently have and are trying hard to correct.

This concludes my opening remarks, Mr. Chairman, on our budget request, and we stand ready to answer any questions you may have, sir.

Senator DECONCINI. Mr. Campbell, we have a host of questions from not only the staff but various Senators because of the new law that is in effect, and we will submit a number of those questions to you for the record. However, I do have some I would like to go over today.

PRODUCTIVITY IMPROVEMENT PROGRAMS

The Office of Personnel Management now has responsibility for implementing a program to improve Federal workforce productivity. Under the Civil Service Reform Act managers are expected to initiate new measures to increase the productivity of their employees, with rewards given to recognize successful implementation of these measures. OPM has requested an increase of over $2 million for productivity improvement programs to collect information on programs that have worked well and to disseminate this information to other Federal agencies for their use. How can we be sure that other Federal agencies will use such information once it has been collected, verified, and disseminated? And perhaps somebody may give us some oversight of how this program is working for the record.

Mr. CAMPBELL. We would be very pleased to.

Let me just make an opening comment about the general productivity program, then I will ask Mr. Gregg to give some details on the specific activities we are engaged in.

PUBLIC SECTOR PRODUCTIVITY

We are convinced that improving Federal productivity is the single most important new direction of the Office of Personnel Management which grows out of the Civil Service Reform Act, as well as the Executive order in which the President assigned to us responsibility for attempting to improve productivity not only in the Federal Government, but in State and local government as well.

We are all aware of the impact the slow growth of productivity has had on our economy. In fact, last year private sector productivity actually declined by six-tenths of 1 percent. I, personally, do not feel there is any more important problem to solve than our productivity decline if we are going to deal at all with the underlying inflationary forces in our economy.

Since the public sector is a third of our total economy, it seems to me we have a particular obligation to improve our performance and productivity. Perhaps, in this way, we can provide a measure of leadership to the private sector, and show that we are as concerned about productivity as it is. We, therefore, are concentrating in this area, and have a number of programs underway. I am convinced there is good responsiveness to these programs in the Federal Departments and agencies, based both on their general desire to do well, and on the new performance appraisals in which bonuses and merit pay will be dependent on productivity improvement. We have built a dynamic into the system to provide genuine payoffs for productivity improvement, and I believe that that will give to productivity the enhanced attention it deserves.

There are other things we need to do, I believe, in using productivity data in the budget process to provide certain kinds of rewards to agencies as agencies rather than only to individuals for improving their productivity. The productivity program on which we have concentrated over the past year, I believe, is genuinely getting off the ground.

I attended a meeting in Houston of the American Productivity Center just last week, and I must say that when I look at what we are doing compared to what the private sector is doing, I am pleased we are undertaking a lot of things which, in many ways, are out in front of the private sector.

Jim, do you want to talk a little more specifically about this?

Mr. GREGG. Senator DeConcini, I think we are trying to take a very practical approach to productivity improvement. We are in the process of identifying in the various agencies specific management practices, techniques, and programs that have proven results in improving agency performance and increasing their productivity. We have documented 4 such programs, and we have under consideration an additional 30 programs in various agencies of the Government. We have corresponded with the heads of every agency and bureau in Government, asking them for their ideas about practices that have been effective for them. We are in the process of documenting those programs and techniques and validating that they, in fact, did result in productivity increases. As we do that, we then disseminate those documents to the agencies.

However, that is really just the beginning. We take those practices and techniques and principles that are involved and incorporate them into our interagency training program, which affects about 170,000 Government employees a year. So this is a very different way of getting those principles and concepts into action.

Second, we are holding specialized workshops in particular areas. For example, we had one recently for case management in legal agencies in which workshop we presented programs and projects that had been effective in other agencies. For example, at the National Labor Relations Board they have an excellent system for developing standards for case processing and managing cases, and they have presented their techniques and approaches to the other agencies.

We have developed just this past year a consulting services program for the other Federal agencies, and through that means as well we bring to the attention of Federal managers these techniques and approaches that can help them increase their productivity. We hope to continue and expand our research to help us understand what general principles are being applied in those programs that allow the managers to get the outstanding results that they have.

PERFORMANCE APPRAISAL AND PRODUCTIVITY

I would also like to mention that in the areas that we have explored so far there do seem to be some rather basic principles that emerge. In most cases the managers have developed a clear performance standard for their operation. They have developed and built accountability into their programs. They have provided feedback to their managers and employees about how they are doing with the programs. These principles, in fact, are the same principles that the Congress incorporated into the Civil Service Reform Act in requiring a performance appraisal system for both our top executives and for the rest of the workforce. So we think there is going to be a strong relationship between our performance appraisal program and productivity in Government, and, in fact, in implementing the performance appraisal we will get substantial productivity improvements in Government. That is another area in which we are concentrating and we believe that performance appraisal will have good results for productivity.

Senator DECONCINI. Mr. Campbell, does the law or the President's directive give you any authority to mandate or direct Federal agencies to implement a productivity recommendation that you might come up with?

AUTHORITY UNDER CSRA

Mr. CAMPBELL. The Civil Service Reform Act gives us authority to require effective performance appraisal systems, and within that requirement productivity is included as a critical element and as a way of measuring the performance of individuals. In that sense we do have authority. We do not have general authority to go to a Department or agency and say, "Here is a good productivity plan. Put it into effect." We are going to have to do that by exhortation and so forth. As I said earlier, I believe that the dynamics of the system have, in fact, been changed by the emphasis which is put on productivity as it relates to bonuses for senior executives and merit pay for middle managers. In that sense we have, for the first time in the Federal system, an incentive to productivity improvement, and I hope that can overcome what has been in the past a disincentive to improvement.

Senator DECONCINI. Is this, in your opinion, as aggressive as you can be in attempting to induce or force productivity changes in other agencies?

Mr. CAMPBELL. I think that it is as aggressive as we can be in relation to our current level of authority. And I would say that authority does allow for a considerable amount of aggressiveness, which we are now practicing. If there were difficulties in trying to get an agency to do something which we felt they ought to do, obviously, since agencies report directly to the President, there would be the possibility of using that influence as a means of getting cooperation from the Departments and agencies. But I hasten to add that we are finding great enthusiasm for this on the part of Federal managers. I think what we are seeing is a desire by Federal managers to prove to the public, as well as to the groups that sit around on the periphery as critics of Federal employees, that they can, in fact, do a job and do it well. And one of our advantages in relationship to this is the desire on the part of the Federal workforce to make this kind of demonstration. Once we get hard data from these efforts, we can quit using anecdotes and start talking much more specifically about the performance of the Federal Government.

Senator DECONCINI. Do you and your staff go to the agencies with this material or do you anticipate doing that? Have you already done that?

OPM CONSULTING SERVICES

Mr. CAMPBELL. Yes, we have a consulting services to Departments and agencies, and we provide services on a request basis for general management improvement which can include productivity.

Jim, you might give us some idea as to the number of agencies involved.

Senator DECONCINI. How big is your consulting service?

Mr. GREGG. We currently have a total of 52 permanent positions in our consulting area, about 20 of those in consulting on training programs. That was a traditional Civil Service Commission function prior to the Civil Service Reform Act. The additional staff are consulting in general management areas.

Just to give you one example of the kind of thing we are doing, we have been working with about 50 Federal agencies which have programs that involve some kind of case management, case process, complaints management, check writing, debt collection, or a variety of such functions, looking at the way they have solved those problems. We are consulting with them and sharing information with them about ways to improve those operations. So it is not at all a passive situation. Also, we have responded to agencies' requests for assistance that we did not initiate. We are helping with problems that they felt they had in their organization and management, and we have provided consulting services concerning those problems.

Senator DECONCINI. Mr. Campbell mentioned that they request this of you. Do you have an outreach program where you go knocking on their door saying, "Hey, this is what we have"?

Mr. GREGG. We do to some extent. However, there has been such an overwhelming demand for this kind of service that we have not at this point needed to do that, because our staff is fully occupied with the work that has come from the outreach we have done so far.

Senator DECONCINI. How many requests have you had from various agencies?

Mr. GREGG. Well, we have about 60 ongoing consulting projects, and we have a great many more requests. In most cases we have tried to refer our requests that we cannot meet either to other parts of our agency or other resources within the Government.

Mr. CAMPBELL. We do, Senator, have an activity in the State and local area in productivity, too, in which Norman Beckman is involved. If you would like some information on that we can either provide it now or provide it for the record.

ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Senator DECONCINI. We notice you have requested an increase of $500,000 for productivity improvement assistance to State and local governments. This program will also compile, verify and disseminate information on instances of productivity improvements in various State and local governments generally. What assurance do you have that such an effort will be effective? What is the attitude of the State and local governments?

Mr. CAMPBELL. We have the evidence of the amount of requests and grant applications that we receive from State and local governments in this area, which is very substantial. And, there is no question that there are requests for projects that are, in our judgment, good ones which we are unable to fund because we do not have adequate funds for doing it.

I would like to ask Mr. Beckman, who runs that program and works very closely with Mr. Gregg in the productivity area, for some specifics.

Mr. BECKMAN. We have tried to adapt all of the authorities of the Intergovernmental Personnel Act to contribute to productivity at the State and local level, primarily because this is a major area of concern at this time, given inflation and resistance to tax increases and so on. We have something like 50 projects approved in 1979 to State and local governments that dealt with productivity improvement, and that, Mr. Chairman, has been doubled to 100 separate projects funded in 1980. That indicates the priority that State and local applicants themselves have expressed.

We have in cooperation with the Workforce and Effectiveness Group established a clearinghouse where you can request information, be it from the Federal Government, State or local, and to our surprise those requests are running at something like 200 separate inquiries a week for materials, information, or assistance.

Senator DECONCINI. Why is the Federal Government assuming the responsibility of the State and local government productivity? Is that in your enabling legislation?

Mr. CAMPBELL. The enabling legislation permits us to aid in the general personnel management field.

Senator DECONCINI. You mean outside the Federal Government?

Mr. CAMPBELL. Yes. The legislation which set up the Intergovernmental Personnel Act includes the mobility assignments as well as the grant program, and within these general authority to give grants in the personnel management area. Eighty percent of those funds are distributed on a formula basis to States, who set up a distribution system within the State to both State agencies and local governments, and 20 percent is awarded on a discretionary basis. The interesting thing has been the movement in terms of the kinds of programs which are being funded, from more traditional personnel kinds of projects to the productivity area. I think this is demonstrative of the kind of pressure there is on all levels of government to get more for less.

Senator DeConcini. How do you justify when you have such demand for Federal agency assistance allocating almost anything to the State and local governments if it is discretionary? Aren't we better off to get our own house in order before we strike out to the State and local?

Mr. Campbell. Well, it seems to me that the Federal Government, because of its extensive use of State and local governments as the service delivery system for Federal programs, has a very special kind of responsibility—and I would argue a need—to aid in improving the machinery of the government at the State and local levels. It is in that sense, it seems to me, that there is a Federal interest.

HEALTH BENEFITS OPEN SEASON

Senator DeConcini. Changing the subject to benefit programs, each year OPM coordinates, through the personnel office of each Department and agency, an open season for health benefit programs. During this period of time each Federal employee is given a booklet for each health insurance carrier who provides a Federal employee's coverage. The booklet describes specific benefits and programs. An employee is given the opportunity to change companies or to change the type of coverage. It is my understanding that OPM bears the cost of approximately $750,000 for printing the booklets. Is that correct and how is that justified?

Mr. Campbell. I am going to ask Gary Nelson, head of compensation, to respond to that.

PRINTING COSTS FOR BROCHURES

Mr. Nelson. Mr. Chairman, in 1979 the cost of printing the brochures that were given to beneficiaries under the health benefits program was a little over $1 million, $1,034,000. We expect those costs will be higher inevitably because of inflation this year and next.

Senator DeConcini. How do you justify spending that kind of money?

Mr. Nelson. I think that we derive a number of benefits from these expenditures. There are two points. One point is that even if we didn't operate an open season, we would still provide employees information on the plans, and that cost would be substantial. The second point is the open season itself. We had an open season last November and December, and we had one for several reasons.

First of all, there were major changes in the premiums for the plans, and changes in benefits. Most importantly, there were 21 new plans offered to employees, and because of the new plans we felt it was important and fair to the plans, and certainly only fair to the employees, if we had an open season. Our experience on open season has been, over the last 5 years, that between 200,000 and 350,000 employees actually make a change during each open season.

Senator DECONCINI. Have you considered sending a letter to all employees indicating that if they want a booklet they can call you or write to you so you don't have to print all those hundreds of thousand of booklets?

Mr. NELSON. We have considered major changes to the program, and this year we expect to produce many fewer brochures. They are going to be replaced by other kinds of literature that will give employees a much better opportunity to compare the benefits and to compare the premiums from these different plans.

HEALTH BENEFIT BROCHURE PRINTING

Senator DECONCINI. Don't you agree that appears to be an exhorbitant cost for printing a booklet so people can make up their mind? Isn't there any other way to reduce $1 million, and rising? What is it going to be next year?

Mr. NELSON. We have been experiencing inflation of about 10 percent a year. We have the prospects under this new procedure for decreasing the cost, however that is not the reason we are pursuing it. I don't know what the proper amount of costs would be. It seems to me that we want to provide different kinds of information, basically different kinds and better information to employees. Consumer information will be helpful to the program, and helpful in controlling the cost of the program. I think overall I would point out that the administrative costs of the program are only one quarter of 1 percent of the premiums, and I think that overall that is a very acceptable level of cost.

Senator DECONCINI. Well, I disagree with you. I think that is a large amount of money to spend on booklets that you are not sure everybody wants. Have you talked about or negotiated with the insurance carriers to chip in and pay that one quarter of 1 percent?

Mr. NELSON. If we transferred the cost to them, there would be no effect on the budget, because basically we pay them only for allowable administrative expenses that they incur and only for claims they have paid.

Senator DECONCINI. What if you ask them to take it out of their profits and put up the million dollars for printing, ask them to contribute?

Mr. NELSON. We have done the printing ourselves because through the Government Printing Office we find we can do it much more cheaply than carriers can if they go into the private sector.

Senator DECONCINI. Have you asked the carriers to consider putting that money up?

Mr. NELSON. Under the way the program is set up, Senator, this would be an allowable expense.

Senator DECONCINI. I understand it is allowable. Have you asked them to change that and they pay for it? I don't think they are hurting too badly. They might be willing, from a competitive point of view, to put in $1 million.

Mr. NELSON. We have in the past year shifted a number of costs to the carriers. We have not talked to them specifically about the printing costs.

Senator DeConcini. I would appreciate your taking that up with them and see what their attitude is and report back to us.

Mr. Nelson. Yes, sir.

HEALTH INSURANCE CARRIERS

Senator DeConcini. Mr. Campbell, there are currently in excess of 150 private insurers that participate in the Federal Government health benefit program, and the number of health insurance plans and carriers has greatly increased since 1975. What criteria exist in order for a firm to participate in the program?

Mr. Campbell. Let me comment briefly, and then I will ask Gary to respond in more detail.

The criteria relate to the fringe benefits and costs of those benefits. There are certain requirements in relationship to benefits which must be included, and there are requirements related to the costs of that insurance assigned to the employee. Obviously, as the Government we feel the program should be open to any carriers who wish to participate on the basis of their being able to provide a service which is helpful to employees.

On more specific matters in relationship to criteria, Gary, do you want to comment?

CRITERIA FOR PLAN PARTICIPATION

Mr. Nelson. Yes. There are really three kinds of plans we have mandated by law; The Government-wide plans—of which there are two—the indemnity benefit plan which is run, of course, by Aetna, and the service benefits plan run by Blue Cross/Blue Shield.

Second, the law also authorizes employee organization plans. Typically these are run by employee organizations or unions. There are about 18 of these plans.

The third type of plan is a very important class, the health maintenance organizations. We now have 85 different plans there.

A number of the employee organization plans are underwritten by private carriers, but the greatest participation of private carriers in our program is in the indemnity benefit plan. Congress did not wish to give all of this business to one single carrier. Therefore, we have provided for reinsurance, and that reinsurance is carried out by Aetna with very little Government participation. There are a large number of firms which participate in that reinsurance pool. It really does not have a direct effect on the program.

Senator DeConcini. When a company wants to be considered, what do they do? Do they make an application to you if they want to?

Mr. Nelson. That is a part of the program that does not involve us. Aetna conducts the reinsurance part of the program.

Senator DeConcini. New plans?

Mr. Nelson. Yes, we have had two kinds of plans entered into the program in the past year. First, Congress created a window in which there could be more employee organization plans. And I believe that we have added six under those provisions in the past year. Second, we have had a rapid increase in the number of comprehensive plans. We have added 21 last year. We expect a comparable number this year.

HEALTH MAINTENANCE ORGANIZATIONS

We have set criteria for these comprehensive plans. First, they have to meet HEW requirements for health maintenance organizations. In addition to that, we have certain criteria with respect to the financial characteristics of these plans. Our employees are involved in a business relationship and the Government is involved in a business relationship with these plans and we are concerned they be viable plans from a financial standpoint as well as from a technical or medical standpoint.

Another criterion that exists is we require that health maintenance organizations maintain on staff three major medical specialties. And this is so they have in-house, on staff, a variety of services they can provide directly to the members of the plan.

Senator DECONCINI. Once they meet your criteria, then what, are they certified?

Mr. NELSON. Yes; we really have encouraged the increase of comprehensive plans in the program.

PLAN COMPETITION

Senator DECONCINI. Now that is for the purpose of increasing competition, I take it?

Mr. NELSON. Yes; It has two purposes. One is that with more plans, we have more competition. The second is that our agencies, but more generally this administration and, in fact, prior administrations, have really emphasized health maintenance organizations as a way to control the rising medical costs. The prepaid nature of these plans has very good features from the standpoint of helping to control health care costs. We have supported that, and we have encouraged the development of comprehensive plans.

Senator DECONCINI. What competitive factors do you employ after they are certified?

Mr. NELSON. I think that the most important competitive factor in that program, Mr. Chairman, is the fact that, first, we have 105 different plans that employees can choose from. Employees in some areas have as many as 15 or 20 plans to choose from. The second is our method of financing these plans. The Government contribution to a plan is a fixed dollar amount. Any extra costs that the plan incurs show up in the premium as part of the premium that must be paid by the employee. So the Government is not absorbing the increased costs. If the plan incurs unnecessary expenses, it is the members of that plan that pay the cost.

Senator DECONCINI. Excuse me, the Government just pays a certain amount?

Mr. NELSON. That is correct.

Senator DECONCINI. Regardless of what plan employees have?

Mr. NELSON. Yes. We take six of the largest plans and calculate the average premium and then calculate 60 percent of that as the government's share. That determines a specific dollar amount. And then that amount is paid for every plan. Therefore the plans themselves have a great incentive to reduce costs and control costs, because if their premiums rise, it is passed on dollar-for-dollar to the people who choose their plans. And we have found when the costs rise, membership goes down.

Senator DeConcini. If costs go down, does the Government participation go down or does that come out of the employee's share?

GOVERNMENT PARTICIPATION

Mr. Nelson. We have a limit of 75 percent that is the maximum we will pay.

Senator DeConcini. What is the minimum you pay in any plan?

Mr. Nelson. There is no minimum.

Senator DeConcini. What is the actual minimum, would you guess?

Mr. Nelson. I don't know. Could I supply it for the record?

Senator DeConcini. Would you please.

Mr. Nelson. Yes. The lowest Government payment is 44 percent.

Senator DeConcini. Do you think it is substantially less than 75 percent?

Mr. Nelson. Oh, yes; the Government-wide average is almost exactly 60 percent.

Senator DeConcini. So some are below that.

Mr. Nelson. Yes; particularly plans with more generous benefits, and some of the comprehensive benefits that always have higher premiums.

Senator DeConcini. Do you get involved with any of the negotiations with the carriers after they are certified?

Mr. Nelson. Yes; my organization conducts negotiations with all 105 plans.

Senator DeConcini. So it is not just merely the employees picking it. You also get involved as to the coverage and cost.

Mr. Nelson. We give carriers guidance and give them encouragement in terms of things we think they can do to save money.

Senator DeConcini. There being so many carriers wanting to get in or that are in, is there any consideration—or maybe you do this—of trying to get them to compete against each other on a bid basis, or is that prohibited?

Mr. Nelson. We have not considered it. The Congress has set up three different kinds of plans, the Government-wide plans, of which there are two, the employee organization plans, and the comprehensive plans. The comprehensive plans are very specific to local areas, and as we increase the number of plans, we are not necessarily increasing the number in each specific area, but rather increasing the areas of the country that are covered by comprehensive plans. So we think that is good. But we have not considered any proposal to limit the number of plans or to go to one Government-wide plan that we might operate.

Senator DeConcini. Thank you.

GRADE INCREASES

Mr. Campbell, the grade increases concern the committee. We note on June 30, 1960, the average grade for full-time employees stood at 6.7; June 30, 1970, the figure was 7.9; last year the committee was told the OPM projected the average grade would be 8.1 on June 30, 1980. There has been a 20-percent grade creep increase in the last 20 years. What is your office and department doing to reverse this?

Mr. CAMPBELL. Let me comment briefly, and then I am going to ask Mr. Sugarman to supply some additional information.

First, it is important to understand, I think, that the change in the type of work and therefore the type of professionals in the Federal Government means that there is going to be some gradual increase in grade because of the increase in the number of engineers and other professional groups of that kind which have become a larger proportion of the total work force. However, there clearly is also some inappropriate grade creep. There is an effort by management often to respond to what they think is particularly outstanding performance, and, in some of those cases, the grade will go up even though the responsibilities of the job have not changed that much. So there needs to be continual attention to dealing with that issue.

The save pay-save grade portion of the Civil Service Reform Act is, we believe, an asset in dealing with the problem, because it holds harmless the employees who, through no fault of their own, are in a higher grade than they should be in relation to the responsibilities of the position. That situation I think will mean the departments and agencies are more ready to deal with the grade creep problem, and we are specifically involved in dealing with that.

Jule, do you want to add to that?

Mr. SUGARMAN. I think first we should note the great bulk of that increase occurred during the time before the Pay Comparability Act was enacted in early 1970, and I think it was, to a considerable degree, a result of pay pressures that developed before we had a comparability system. Since roughly 1974 there has been a modest increase, on the order of two-tenths of a grade.

Second, we do have a factor working here, and that is a large portion of the lower level jobs are now contracted out, particularly in the janitorial field and in the security field. Many jobs that were once performed by Federal employees are in contract, in line with the general principle that we ought not do those things that can be done by the private sector.

Senator DECONCINI. Do you know what the percentage of that is, say, in the area of janitorial services?

Mr. SUGARMAN. It is very, very heavy on janitorial services.

Senator DECONCINI. Do you know what the increase is over 5 or 15 years ago?

Mr. SUGARMAN. We would have to supply that for the record, the specific figures.

Scotty has already mentioned the save grade provision, which has the effect of showing jobs at a higher level than they are actually rated until the 2-year savings provision runs out.

Finally, we do have a fairly vigorous enforcement program of audits of agencies in which we periodically go into agencies to examine grade levels, and we tend to concentrate on those agencies where we believe there may be a problem. We look at the data we compile centrally on particular occupations. This is supplemented by OMB activity, where the budget examiners raise questions each year during the budget process about occupations in a particular agency that seem to show increases.

So I think, in sum, the growth has markedly slowed down. It is still there, and we try to be very vigorous in looking at it.

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Senator DECONCINI. Mr. Campbell, one other subject matter. One hundred sixty thousand dollars is requested as a fiscal year 1980 supplemental for the Commission on Executive, Legislative, and Judicial Salaries. This Commission studies and makes recommendations at 4-year intervals. What is the date the Commission is required to make its recommendations to the President?

Mr. CAMPBELL. The authorizing legislation, I believe, gives the Commission 1 year. However, the normal practice has been for the President to request the report previous to that. The Commission, under current legislation, begins its deliberations in October. And last time the President requested that report by the end of that year. He received it in early December and based recommendations on it which he sent to the Congress in January as to what should be done with executive and judicial and legislative pay.

Senator DECONCINI. Additional authorizing legislation is required for this Commission. What is the status of that?

Mr. CAMPBELL. We do not require new authorizing legislation for the Commission to go into business on October 1. What we have requested is that it be permitted to do so on July 1, in order to try and get the report done in good time and with sufficient deliberation to be considered in the beginning of the next year, with the President using it for his budget message in January. What happened was that the language of the authorizing legislation relates its start to the fiscal year. That means previously it began the first of July, when the fiscal year ended on June 30. When the fiscal year was shifted, because of the way the language is in the act, that shifted the starting date until the beginning of the new fiscal year in October.

Senator DECONCINI. Mr. Campbell, we know you have to be over on the House side with your staff and we will submit some other questions. We want to thank you for the well prepared staff you have here today and for your presentation.

Mr. CAMPBELL. Thank you very much, sir.

[The following questions were not asked at the hearing but were submitted to the agency for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

TRENDS IN FEDERAL WORKER PRODUCTIVITY

Question: Annually, a publication is prepared by OPM which discusses productivity in the Federal Government. A portion of this report discusses and compares the trends in Federal workplace productivity in 26 different functional categories. What are the trends in productivity in the Federal workplace?

Answer: The Federal productivity measurement program covers 65% of the civilian workforce or 1.8 million workers. The Annual Rates of Change in Output per Employee Year are reflected in the following table:

Annual Rate of Change in Output Per Employee-Year for Total Federal Sample

For Fiscal Years	Rate of Change
1967-68	1.1%
1968-69	2.4%
1969-70	0.5%
1970-71	1.6%
1971-72	0.6%
1972-73	2.8%
1973-74	-0.5%
1974-75	1.5%
1975-76	1.7%
1976-77	2.9%
1977-78	1.7%

Average Annual Rate of Change...1.4%

The following bar charts reflect the different rates of change for each of the 28 functional categories. Table 1 is from FY 1967-78, and Table 2 from FY 1977-78.

Question: Which of these 26 functional categories are experiencing the most rapid increases in productivity?

Answer: The four functional areas that demonstrated the largest annual increases in output per employee year between FY 1967 - FY 1978 were Communications, Library Services, Loans and Grants, and General Support Services. The major reason reported by the agencies for the relatively large and continued productivity increases for these functions was technology improvement.

a. In Communications, increases in productivity are strongly tied to technological advances, the upgrading of equipment, and management improvement efforts which have permitted communications centers to handle larger calling volumes. The continued automation of the message preparation process, such as the installation of optical character readers, and the consolidation to larger, more efficient telecommunications centers have been instrumental in causing this function to attain the highest average annual rate of productivity gain in the Federal Government.

AVERAGE ANNUAL RATE OF CHANGE IN OUTPUT PER EMPLOYEE-YEAR BY FUNCTIONAL GROUPS AND TOTAL MEASURED SAMPLE, FY 1967-78

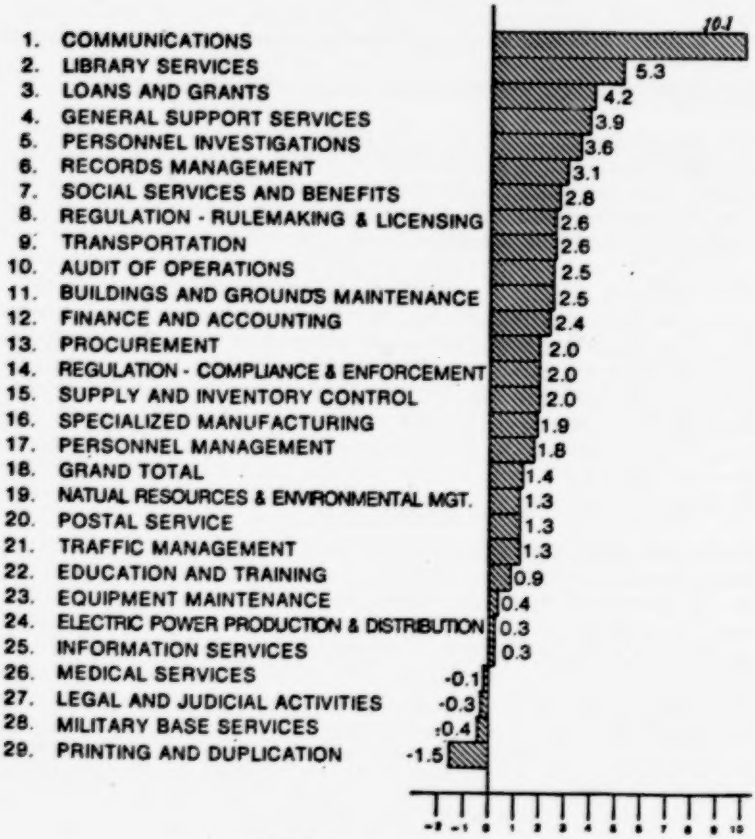

TABLE 1

AVERAGE ANNUAL RATE OF CHANGE IN OUTPUT PER EMPLOYEE-YEAR BY FUNCTIONAL GROUPS AND TOTAL MEASURED SAMPLE, FY 1977-78

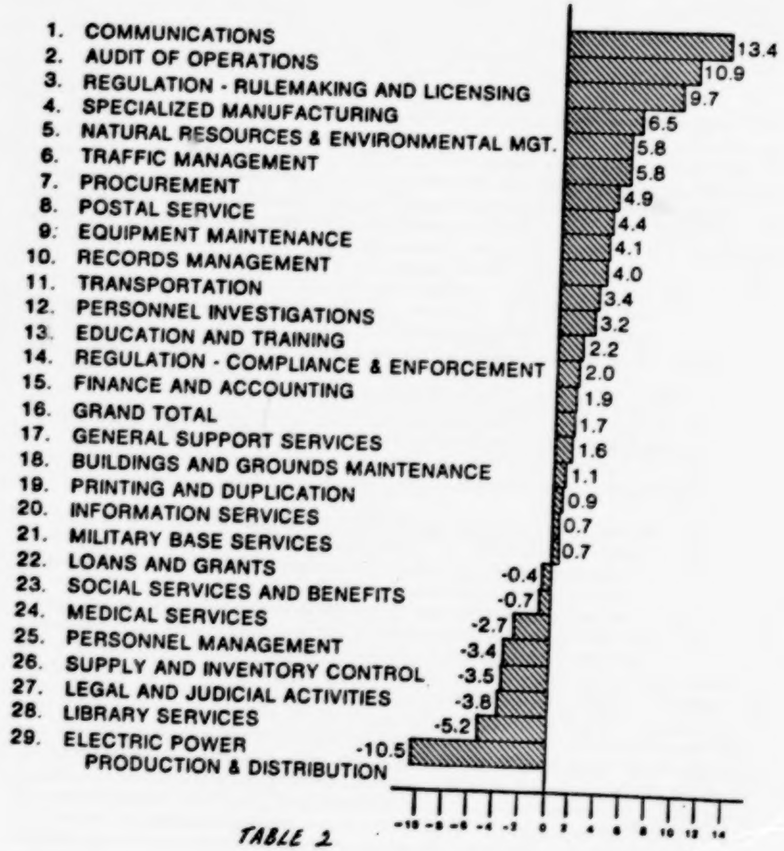

TABLE 2

b. In the Library function, improvements made in productivity were attributed, in part, to the installation of automated systems which permits library users to directly access reference materials.

c. The Loans and Grants function attributed the productivity improvement to technological innovations and automated systems, including MIS word processing.

d. In the General Support function, the most frequently mentioned reason for an increase in output was improved technology which included such things as full utilization of existing equipment, more effective use of ADP and technological innovations.

When reviewing agencies' reasons for productivity improvements, it is apparent that a lion's portion of the improvements has been attributed to technological improvements and innovations. It might be advisable for government to enter into a large scale capital investment program. DOD has an effective capital investment program which has shown major gains during its few short years of existence. For example, DOD has improved its productivity in equipment maintenance by use of major capital investment in facilities and equipment.

Question: Which of the functional categories are experiencing the least improvement in productivity? Please discuss and explain the trends that are apparent in productivity in the Federal workforce.

Answer: Four functional areas exhibiting the least improvement in productivity from 1967 to 1978 include Printing and Duplication, Military Base Services, Legal and Jucicial Activities and Medical Services. A variety of factors were cited as having a negative impact on productivity growth.

a. In the Printing and Duplication functional area, several printing offices stated that a large number of the more routine, simplistic jobs were being contracted out, while the more difficult, time consuming jobs were retained for in-house production. This contracting out of simple, volume jobs effected a decline in productivity. Also contributing to declining productivity was the proliferation of office copy machines. Many jobs which formerly were handled by the printing office are now being produced in individual offices.

b. Productivity declines were also noted in Military Base Services from 1967 to 1978. While substantial declines were noted in the early seventies, productivity improvements have resulted in the latter half of the seventies, but the overall long run trend is still that of declining productivity. As our Vietnam involvement wound down, the demand for military base services declined. Over time, the military was able to adjust its personnel to eliminate unnecessary staff in certain base activities.

c. The format and procedural requirements of Legal and Judicial Activities have become more complex over time. Therefore, a measurement problem may exist when agencies do not properly weight their outputs to account for changing complexities of the product.

Further contributing to declining productivity are budget constraints which prevent the hiring of qualified professional staff needed to process work expeditiously.

d. For many organizations in the Medical Services functional area, declining productivity is simply a reflection of measurement problems. Some organizations use as their measure of output the number of inpatient days. As medical technology improves and preventive medicine becomes more successful, the number of inpatient hospital days actually declines. In reality, this measure shows declining efficiency, but increasing effectiveness of medical care.

IMPLEMENTATION OF PERFORMANCE APPRAISAL SYSTEMS

Question: Each agency is required to develop a performance appraisal system under the Civil Service Reform Act. The system must start no later than October 1, 1981. Periodically employee job performance is assessed under this system and the results are used as a basis for training, rewarding, reassigning, promoting, reducing-in-grade, retraining and removing employees.

What efforts are being made to provide managers with the training required to design and operate well understood and fair performance appraisal systems?

Answer: Following are the OPM performance appraisal courses developed since January, 1979:

-- Performance Appraisal: An Introduction
-- Performance Appraisal: Setting Performance Standards
-- Performance Appraisal: Counseling and Feedback
-- Performance Appraisal: Analyzing Performance Deficiencies

Each of these courses is available through the OPM nationwide training system and is also available for handoff to agencies. OPM has trained over 6,000 Federal managers in these courses.

Since departments and agencies conduct about 60% of all the training provided for their employees with in-house staffs, OPM has also made a major effort to put its training course packages in agency training staff hands. Beginning in May, 1979, OPM provided each major department and agency a set of the course materials for its course, "Performance Appraisal: Setting Performance Standards" and provided instructor institutes for their trainers in the use of these materials. As a result of this effort 210 agency staff members were trained. This handoff effort was undertaken to provide agencies a course which could be tailored to their unique needs or could be used as a standard against which they could compare other training on setting performance standards. A second course on counseling and feedback was handed off similarly in December, 1979.

Question: Has the cost of implementation been estimated?

Answer: It is difficult to estimate the cost of implementation in agencies due to the different activities that may be considered in the implementation process in any agency. Many of the costs are included in the normal operations of agency personnel offices and management training programs. Furthermore, implementation estimates change fairly rapidly as agencies gain experience. In December of

1979, OPM conducted a survey of 66 agencies representing over 90% of the Executive Branch workforce. Some of the findings of that survey included:

44% of the agencies responded to a question regarding the amount of money for performance appraisal system development in 1979, indicating total expenditures specifically identified for performance appraisal system development at $1.6 million. For specific implementation activities, 20% of the agencies indicated expenditures of $321,000.

50% of the agencies indicated total expenditures specifically identified for system development in 1980 at $2.2 million; 47% of the agencies indicated expenditures specifically identified for implementation in 1980 at $9.1 million. For 1981, 27% of the agencies indicated specific system development expenditures of $534,000; 42% of the agencies estimated a total of $8.5 million for implementation.

These figures, it must be emphasized, reflect only the expenditures specifically identified for performance appraisal development and implementation and not those that are included in ongoing personnel and management training activities. For example, it is estimated that there are approximately 110,000 managers and supervisors in the Federal workforce. If each requires a minimum of four hours of training in performance appraisal, 440,000 hours of training would be necessary. According to our most recent estimates, the average cost per hour for management training in Federal agencies is $8.52 per hour. Thus the total minimum training cost for managers would be $3.8 million, an amount typically not specifically identified for performance appraisal implementation by agencies.

Question: How many agencies have contracted out their work on performance appraisal system development and training?

Answer: Our most recent data indicates that 22 agencies have contracted for assistance with development and implementation of performance appraisal systems with private contractors.

Question: What is the total cost for contractors?

Answer: Based on the information we have, the total cost of contracts so far is $10.1 million. This includes $7.6 million awarded so far by the Navy for a contract for system development and training in both performance appraisal and merit pay.

Question: Were consultant services and training available from OPM or have agencies found it necessary to seek outside assistance from contractors?

Answer: Agencies have obtained consultant services and training both from OPM and from contractors. OPM's resources are not sufficient to provide all the services desired in the short period of time during which systems are being designed and implemented. Also, the use of private contractors expands the breadth of experiences from which agencies may adapt a system. It should be pointed out, too, that many agencies are developing and implementing systems using only in-house resources supplemented by technical advice and assistance from OPM without the use of either OPM or private contractors for consulting or training.

Question: Where is the money for these contracts coming from?

Answer: Funds for the contracts come from the agencies' own appropriated funds.

Question: What attempts have been made to share agency expertise and/or bring in individuals with expertise in this area from the private sector?

Answer: OPM operates a Clearinghouse on performance appraisal designed to identify, collect, and disseminate information about experiences in developing and implementing performance appraisal systems in both the public and private sectors. In addition, OPM conducted in January a highly successful showcase for agencies to share with one another their experiences in such areas as appraisal methodology, diagnosis, methods of setting standards, consistency in elements and standards, managerial involvement, pilot testing, training, and evaluation. Furthermore, each month the Interagency Advisory Group Committee on Performance Appraisal, consisting of representatives from 66 agencies, meets to discuss areas of common concern. A meeting planned for early fall, 1980 will include presentations from several private sector organizations on their experiences as a follow-up on a similar presentation in 1979.

Question: Have contractors contracted with more than one agency to develop performance appraisal systems? If so, what assurances do you have that one agency is not buying assistance or systems developed and paid for by another agency?

Answer: OPM has developed and distributed a checklist on the use of consultants in performance appraisal which provides agencies with some guidance to avoid this problem. In addition, OPM developed and distributed to agencies a list of consultants and the agencies in which they were working on performance appraisal, with the recommendation that agencies contact other agencies in which consultants have worked prior to contracting. Finally, we have asked agencies to provide us any materials resulting from the contracts that are suitable for handoff to other agencies. These materials will be marketed through our resource centers and through day-to-day agency contacts by our agency officers.

Question: Should OPM take a more active monitoring role to assure this duplication does not happen in the future?

Answer: OPM will regularly update the list of consultant contracts and agencies referred to above which will provide an indication to both OPM and the agencies of possible duplication. The responsibility rests primarily with the agencies, however, to assure that the services they obtain are cost effective and unavailable at lower cost elsewhere.

Question: What has been OPM's involvement in this contracting process?

Answer: In keeping with OPM policy to promote maximum flexibility and minimum regulation for agencies, OPM's role has been primarily one of providing advice to agencies upon request regarding contracting. As indicated above, OPM has developed and distributed a checklist on the selection and use of consultants in performance appraisal and a list, which will be regularly updated, of consultants and the agencies in which they are working. In addition, OPM has, on request, reviewed and commented on contracts or interim products of consultants for agencies.

Question: What should OPM's role be (with respect to the contracting process)?

Answer: We consider our current role to be the most appropriate one in light of the diversity within the field and OPM's policy, reflecting the spirit of the Civil Service Reform Act of 1978, of minimum regulation. OPM will continue to provide information to agencies about the contracting process.

Question: What is the extent and nature of OPM's experience in PA design and implementation?

Answer: OPM has a consulting staff with 9 professional members (2 more scheduled to be added in the near future). Most have professional degrees at the master's level or above in the fields of organizational, industrial, or research psychology as well as in public administration and political science. More than half have direct experience in the field of performance appraisal and all have experience in related personnel and general management areas, such as MBO, performance analysis, position classification, motivation, labor-management relations, and counseling. The staff blends the knowledge of performance appraisal and Government organization in an effort to be of most effective help to Government agencies.

Question: Is the experience adequate? Do you have enough trained staff to provide assistance to agencies?

Answer: As indicated above, OPM is in the process of expanding the consulting staff to improve its assistance to agencies. However, OPM views the primary responsibility as resting with the agencies themselves. OPM could never staff sufficiently to handle all the assistance that conceivably could be needed. But between the internal resources of the agencies, private contractor help, and assistance from OPM, we believe the resources are adequate.

IMPLEMENTATION OF PERFORMANCE APPRAISAL SYSTEMS

Question: Four agencies, OPM, MSPB, FLRA, and EEOC, get involved in performance appraisal policy issues. Are these agencies' policy decisions being coordinated?

Answer: These four agencies are independent of one another and operate in a "checks and balances" way. For that reason, proactive coordination of policy is not appropriate. The four agencies do cooperate with each other, however. OPM provides input, primarily through written briefs or oral testimony, to the MSPB, FLRA, and EEOC. When decisions of the three bodies are made, OPM actively provides agencies with interpretation and guidance regarding them.

Question: Has the Wells versus Harris case ruling requiring an OPM approved performance appraisal plan before taking any action on removals for unacceptable performance increased the workload?

Answer: Yes, insofar as those decisions adjudicated under Chapter 43 were reopened and remanded to the original field office by the Board, (including those appealed but not decided prior to the Wells decision) and were readjudicated under Chapter 75.

The workload was increased:

-- For MSPB, in that, when requested, readjudications were necessary, including in some cases new hearings.

-- For agencies, in that agencies first had to request adjudication under Chapter 75 and furnish supporting documentation, and subsequently provide agency representation and furnish witnesses for hearings.

-- For the appellant, if a reply is made to the agency's representations for adjudication under Chapter 75 and if the appellant attends a second hearing and furnishes witnesses.

Question: Has it made it more difficult to separate an unproductive employee?

Answer: Yes, for the moment, in that the agency must meet the higher standard of evidence (preponderance of the evidence as against substantial evidence) and the more difficult merit standard (such cause as will promote the efficiency of the service as against failure to meet the standard in one or more critical element(s)).

To balance the more difficult merit and evidence standards, agencies are more familiar with the requirements in Chapter 75 and there is case law on many of the principles under that chapter.

Of those actions effected under Chapter 43 and adjudicated under Chapter 75, initial decisions have been issued in 45 appeals. Of these, 38 (84.4%) affirmed the agency action, 2 (4.4%) reversed the action on harmful error, and 5 (11.1%) reversed on merits. These figures compare favorably with the 81.6% affirmed, 3.8% reversed on harmful error, and 14.6% reversed on merit for actions which were both effected and adjudicated under Chapter 75.

NUMBER OF HEALTH INSURANCE CARRIERS INCREASING

Question: There are currently 105 carriers that participate in the Federal government's Health Benefit Program and the number of health insurance plans and carriers has greatly increased since 1975. What criteria exists in order for a firm to participate in this program?

Answer: The criteria for approval of plans are derived from a set of statutory and regulatory requirements stemming from the FEHB Act. The basic requirements are that the plans demonstrate sufficient financial, administrative and health care expertise to enter into and properly discharge their obligations under the FEHBP contract. This intent is translated into a number of specific requirements regarding staffing, experience, etc.

Question: Why are there so many firms in the Program and why is the number increasing?

Answer: There are currently 105 health plans in our Program. Of the plans added since 1975, all but six have been Comprehensive Medical Plans. The fact that there are 85 Comprehensive Plans does not mean, however, that each employee has 85 plans available to him or her. Comprehensive Plans provide direct health care services to members in limited geographic areas - most typically, in a small three-or-four county area of one state. Likewise, there are many areas of the country in which Federal employees do not yet have a comprehensive plan available to them.

The proliferation of Comprehensive Plans in the FEHBP parallels a similar growth of the number of developing and operating Health Maintenance Organizations (HMOs) in the United States. This growth can be directly traced to the efforts of this and past administrations to assist and encourage the development of HMOs, following the passage of the Health Maintenance Act of 1973. As long as new plans are coming into existence, it can be anticipated that they will want to be offered to Federal employees in their areas. In this regard, it should be noted that Federal Law mandates private sector employers to offer HMOs to their employees. Our role as a major employer is consistent with this effort.

Question: Please describe the competition that OPM builds into the Program in the process of certifying a firm as eligible to do business with the Federal government in this regard.

Answer: Unlike the procured bid process, which focuses on pre-award competition, the Federal Employees Health Benefits Program envisions a multi-carrier offering where competition is fostered among the plans after they are offered. This competition is fostered in the Program in a number of ways. First, there is the competition of the Plans on the basis of benefits. Plans offer a wide range of coverage from the most basic coverage to comprehensive benefits covering most medical care needs. Secondly, the plans compete on the basis of premium. Here again, the employee cost for the plans varies dramatically. Finally, the plans compete on the basis of responsiveness to member needs, efficiency and a number of other factors which are given free play in the market.

Question: What incentives are built into the program to control benefit costs and administrative costs?

Answer: The plans compete based on natural forces of the market place--benefits, price, and other factors considered. There is, therefore, incentive for the Plans to control costs in order to attract and retain members. These competitive forces are accentuated by a number of features of the Program. First, is the number of options available to employees which allows them to choose the best plan for their needs. All Federal employees have a choice among several different types of plans. Second, the employee bears a share of the cost of his premium, thus giving him an incentive to shop wisely among the plans. Moreover, OPM makes a fixed contribution to each plan's premium. Any cost increases (or savings) are passed along to the beneficiaries. Third, each employee is given an opportunity once a year to evaluate his needs and the plans available to him in order to select a plan which will give him the most for his money. Beyond these natural competitive features of the Program, OPM negotiates benefits and rates with carriers in an attempt to ensure that the premiums reflect the cost of providing benefits. As a purchaser of benefits, OPM works with the carriers to minimize premium increases.

It should also be noted that Comprehensive Plans operate on the basis of prepayment of premium in return for the direct services they provide. This prepayment and the direct provision of services give these plans an incentive and mechanism to control costs.

Question: What are OPM's administrative costs associated with contracting and monitoring the performance of each of the plans?

Answer: The FEHBP Act allows OPM to add an additional 1% to each plan's premium. Revenue derived from this 1% constitutes an administrative reserve to cover the cost of OPM's administration of the Program including personnel, printed material, support services, etc. OPM has traditionally used only 3/10ths of this amount for this purpose turning the balance over to the carriers for benefit costs. In order to place this amount in perspective, this 3/10ths of 1% means that only $.30 out of every $100 in premium is spent by OPM in administering the Program. The remaining $99.70 is used to purchase benefits.

Question: What problems are there associated with contracting with increasing numbers of plans?

Answer: From a cost standpoint, by far the largest percentage of premium is used to purchase benefits. Since increasing the number of plans does not result in a comparable increase in the number of claims incurred by members, only the small percentage of premium which is used to administer the Program would likely be affected by increasing the number of plans. Nonetheless, a number of adaptive measures have been taken to lessen the impact of offering larger numbers of plans such as standardization and reformatting of material, reorganization of staff functions and other effort-maximizing measures. Although a continuing pattern of growth may require additional adjustments in the future, there is no major problem to date which can be exclusively attributed to the increase in the number of plans.

Question: Do you have any evidence that the larger number of plans in the Program in 1980 has actually increased benefits, increased competition, or provided Federal employees with broader choices?

Answer: Essential to the free market model upon which the Program is based is the opportunity for employees to select among competing plans. To the extent that Comprehensive Plans present an alternative to traditional insurance, the increasing availability of Comprehensive Plans in areas in which they were not previously available to Federal employees presents a broader choice to employees.

These Comprehensive Plans are an alternative in that they quite often provide a broader level of benefits than traditional insurers, provide members with ready access to an organized system of medical care and operate to control costs through the prepayment incentive. Currently, about 9% of Federal subscribers belong to Comprehensive Plans (up from 6% a few years ago) and we expect this figure to increase with the number of plans.

Although a detailed OPM study has not been undertaken to quantify the competitive effect of offering HMO plans, a reasonable assumption, confirmed by studies done outside the Program, is that the HMO alternative spurs competition on the benefit and premium levels.

NEED FOR ADDITIONAL APPROPRIATIONS IN VIEW OF THE LARGE RESERVE AND THE CLOSING BALANCES

Question: The Presidents Budget (P. 950) shows a closing cash balance of $687 million in the Employee Health Benefit Fund at the end of Fiscal Year 1981 and $177 million in reserves to be held by the carriers. In view of these reserves and the large closing cash balance, why is OPM requesting an additional $757.6 million to be appropriated into the fund?

Answer: The $757.6 million requested to be appropriated is the Government's share of the health benefits premiums for annuitants as specified in the Federal Employees Health Benefits Act of 1959 (Chapter 89, Title 5 USC) and the Retired Employee Health Benefits Act of 1960 (P.L. 86-724). No authority exists to use cash balances to offset the Government's share of health benefits premiums other than that which exists for defraying both the Government's and the employees' contributions through the contingency reserves.

Question: Why couldn't a portion of the funds that OPM has requested for retired annuitants be provided for out of the closing cash balances?

Answer: The closing cash balances represent the Contingency Reserves set up by the Federal Employees Health Benefits Act. These reserves exist for each plan and are funded, by statue, by three percent of the contributions toward the plan. The Act states that the Contingency Reserves "may be used to defray increases in the future rates or may be applied to reduce the contributions of employees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived".

NEED FOR THE LARGE CONTINGENCY RESERVES

Question: The combined reserves held both by the carriers and the Federal Government for the employees Health Benefits Program have nearly quadrupled during the past five fiscal years increasing from $212 million in fiscal year 1975 to $813 million in fiscal year 1979. What is the purpose of these reserves and why have they increased so dramatically in recent years?

Question: Large reserves maintained by the insurance carriers may indicate that past premium costs have been too high. What does OPM do to monitor the size of these reserves and what criteria is used to determine the proper amount of the reserve balances?

Question: From fiscal year 1975 through 1979, the combined reserves have increased from about 12% of total annual payments to carriers to nearly 26% last year. Since the Employees Health Insurance Program is intended to spread the risk of medical costs in a given year over a large group of participants, why are such large reserves necessary?

Answer to the above three questions: The increase in FEHB reserves from 1975 to 1979 represents a relatively small but recurring deceleration in health care inflation. The 1980 rates were set, as were past rates, to use up much of the excess reserves but small improvements in the picture could lead to continuing high reserve levels. However, given the rate of general inflation in recent months it is more likely that reserves will be lower than we expected in developing the budget.

The contingency reserve established by chapter 89, Title 5, Section 8909, is computed on three percent of contributions toward the plans. This reserve balance represents insurance to all participants in the FEHB that all aproved claims which cannot be awarded from current premiums paid to carriers will be paid. The reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the Government to, or to increase benefits provided by, the plan from which the reserves are derived.

By their very nature contingencies cannot be defined ahead of time. The growth in the reserve represents the favorable experience of the carriers in recent years, the income derived from dividends on investments by the carriers and OPM and the transfer of the unused 1% allowable for administration of the plan. While the size of the current reserve does appear large it has resulted from uncontrollable variables in previous years and if projected experience is realized in future years will drop to $687 million by FY82.

Question: What criteria are used by OPM and the carriers to determine appropriate reserve levels?

Answer: According to Sec. 890.530 (2) of the Health Benefits Act the Carrier's Reserve is allowed an amount equal to its last 5 months' subscription charges received from the Fund if its Contingency Reserve has balances in excess of the minimum preferred balance of one month's premiums. (Based on the average monthly rate during the last contract period.)

Question: In determining biweekly subscription rates, 3% is
added to program costs for contingency reserves which are also sup
plemented to the extent administrative expenses are below 1% of pr
gram costs, in view of the the reserve accumulations that have
occurred, is the 3% surcharge realistic? Is it set by statute or
administratively by OPM?

Answer: The FEHB statute requires that amounts of up to o
and three percent of premium be withheld for administrative expen-
ses and contingencies, respectively. The full amounts have always
been withheld. By their very nature, contingencies cannot be defi
ahead of time but there have been times when the contingency reser
have been useful so we consider withholding the full levels to be
reasonable. The contingency reserve has been used to help pay cla
cost for terminated plans; cover mid-year rate increases for commu
ity-rated plans; and as a source of funds to cover delayed premium
implementation.

Question: To the extent reserves are considered excessive,
they may be applied to carrier payments thus reducing the need for
rate increases. During the last 5 years payments to carriers from
contingency reserves held by the government have ranged from $17
million in Fiscal year 1977 to $88 million in Fiscal year 1979. T
actual draw-downs, however, have been considerably less than the
amounts estimated in the budget. (During Fiscal year 1977 through
1979, there was an average difference of $33 million per year betw
the initial budget estimates and actual amounts drawn-down.) What
policies and procedures are used to estimate how much the reserves
should be drawn-down to reduce costs paid by the employee and em-
ploying agency?

Answer: The contingency reserve is also used to avoid exc
build up of funds by carriers. Generally, any amounts over one
month's premium are paid to the carriers each year unless total ca
rier reserves are more than five month's premium. The favorable
experience of recent years has lead to some large carriers' reserv
exceeding the limit so our projected payments have been less than
expected.

Question: How are the reserve levels taken into consideratio
during rate negotiations with the carriers?

Question: What information is reviewed by OPM prior to negot
tions and what type of reserve agreements, if any, are reached dur
rate negotiations?

Answer to the above two questions: Each year OPM negotiates
new set of rates with each carrier. Since rates are set a year an
a half before the end of the rate year, they must include a margin
to avoid a negative reserve position and the possibility of the
carrier not being able to pay promised claims. OPM proposes margi
at the minimum possible levels but, when carriers disagree, we some
times must compromise. Our minimum margin goal is one months' pre-
mium for most carriers and zero to one half months' premium for
Aetna and Blue Cross/Blue Shield.

Rates must not only be sound but the pattern changes in rates shoul
be relatively stable. If, for instance, a carrier has built up a
three month reserve through favorable experience, we could reduce

the rate by fifteen percent in the next year but this would have to be followed by a 40 percent increase in the following year. The same goal could be achieved with no change in the first year and an eleven percent increase in the second year. The latter approach results, temporarily, in larger reserves but we believe the results are greatly preferable.

Question: What followup activity is used to monitor reserve drawdowns as estimated in the budget, negotiations with carriers, or other financial plans?

Answer: We receive and review a number of reports. Since claims are the most significant and variable part of the cost, they are monitored very closely. Monthly, quarterly and annual claims reports are received and analyzed by actuarial computer programs. Complete financial statements are filed and reviewed twice a year. This is in addition to the extensive review of past and projected experience during rate negotiation.

Question: The reserves for the Federal Employees Health Benefit Program are held both by the Government in the trust fund and by the carriers. The portion held by the carriers has increased from about 28% in 1975 to some 44% in 1979. Given the fact that each carrier maintains an individual account in the federal trust fund, what criteria are used by OPM in determining the portion of reserve totals that should be held in trust by the government and that to be held by the carriers?

Answer: The shares of the fund held by the government and the carriers are a direct result of the premium setting process. OPM does not believe that arbitrary shifts of funds between the government accounts would significantly change the total financial situation.

Question: The budget estimates indicate that carrier reserves are expected to decrease significantly during the next two fiscal years, dropping from $361 million at the end of fiscal year 1979 to $177 million at the end of 1980. In each of the past three fiscal years, however, carrier reserves have increased despite the fact that budget estimates projected reduction. In light of this experience, how realistic are the budget estimates for fiscal years 1980 and 1981?

Answer: The 1980 rates, and budget, assumed that average claims costs would increase at an annual rate of 13 percent through 1980. The 13 percent is close to actual trends that have developed. Also, for 1979, the four largest plans reported total losses of $76,000,000. If this pattern holds the special reserves will continue to decline and this will lead to declines in the contingency reserve so the total fund will be close to that projected in the budget.

Question: Increases in reserves held by the carrier have the effect of increasing budget outlays since the level of carrier reserves impact the flow of cash from the U.S. Treasury. Historical data for recent years indicate a consistent increase in carrier reserves between the end of the Fiscal year (June 30 or September 30) and the close of the contract and calendar years (December 31): up $99 million in 1976; $134 million in 1977; and $125 million in 1978.

In view of the post-budget adjustments, how valid is the financial picture presented at the end of each fiscal year?

Answer:

(AMOUNTS ARE IN MILLIONS OF DOLLARS)

FY Ending	Carrier Reserve at 6/30 or 9/30	Carrier Reserve at 12/31	Difference	*December Reserve Contingengy Payments	2nd Half or 4th Qtr Inc.
6/1975	-0-	(18)	(18)	40	(58)
6/1976	88	187	99	35	64
9/1977	166	300	134	60	74
9/1978	344	469	125	60	65

*Amount of Contingency Reserve Payment made in December to Service Benefit Plan

The 6/30 and 9/30 Reserves Held by Carriers is our estimate, based on preliminary accounting reports provided by the carriers on their 6/30 operations. In mid-December OPM makes a Contingency Reserve payment to the Service Benefit Plan. This is not a post budget adjustment but one aspect of contract arrangements with all experience rated carriers.

Question: How does OPM monitor the financial position of the carriers and what type of monthly or quarterly reports are received from the carriers?

Answer: As stated in question 41, we receive and analyze a number of different monthly, quarterly, and annual reports.

Question: What further steps might be considered to strengthen the financial management of this program?

Answer: We believe that our financial management of the program meets the intent of the statute and sets minimum premium levels within the constraints of financial soundness and consistent rate changes. We are always reviewing our operations to insure that these goals are being met.

Question: A reduction in carrier reserve levels would reduce outlays but a reduction in withholdings from employees, annuitants, and contributions from off-budget agencies have an opposite effect of increasing outlays. In view of the Congress and administration's interest in reducing federal expenditures, couldn't some alternatives be considered for financing the Employees' Health Benefit Program?

Question: Please develop a balanced alternative that would maintain the financial integrity of the program, further reduce carrier reserves below levels estimated in the budget, and also provide a benefit to employees by reducing future increases in Health Care premiums.

Question: A different approach to the insurance plans would be for the Government to maintain and invest all of the reserves and essentially be a self-insurer. Funds could then be advanced to insurance companies on an as-needed basis to pay claims or the Government could pay these claims directly. Has OPM done a cost benefit study to see if this approach would benefit the Government and Federal employees?

Answer to above three questions: In 1959, Congress set up the FEHB program to make a variety of health insurance approaches available to Federal employees through private sector carriers. We believe that this system has worked well and would hesitate to completely change the direction of the program now. Reducing reserves would, in fact, adversely affect the total government budget. Since claims and expenses will not be affected by the premium level any reduction in premium would reduce income to the FEHB fund. This would reduce the contingency reserves and/or the special reserve. In either case, total federal funds would decline and any federal budget deficit would be increased.

Question: The reserves held by insurance carriers for the Federal Employees Group Life and Health Insurance Programs are invested and the income earned is credited to reserves to offset future costs. Contingency reserves for these same programs are also held by OPM and invested in treasury securities. How do investment yields for the various carriers compare to the yields earned on the OPM contingency funds invested in Treasury securities? What does OPM do to monitor the investment performance of the insurance carriers to see that earnings are maximized and consistent among the various carriers? How do investment yields for the various carriers compare to the yields earned on the OPM contingency funds invested in treasury securities?

Answer: We do not routinely compare the investment yields of the various carriers with Treasury securities since our current practice does not include arbitrary transfer of funds between reserve. We have recently looked at new money investments of the largest carrier and find that these were higher than currently available Treasury issues.

IMPLEMENTATION OF MERIT PAY SYSTEMS

Question: The Civil Service Reform Act established a merit pay system for supervisors and managers in an attempt to reward them for above average or superior performance. Each agency is required to submit merit pay and performance appraisal plans to OPM for review and the systems must be implemented by October 1981. Have all agencies submitted merit pay and performance appraisal plans for OPM approval?

Answer: Not all agencies have submitted their merit pay and performance appraisal plans for Office of Personnel Management approval. The agencies are not required to do so until April 1, 1981, at the latest. However, 22 agencies employing approximately 58 percent of all GS-13 through 15 employees have submitted their merit pay plans and a few have received approval (OPM, Commerce, Navy, Farm Credit Administration). Another nine agencies with

Answer: The Office of Personnel Management (OPM) is designing a Merit Pay Management Information System to obtain data on employee actions taken under the Merit Pay System that effect these employees which will include data on the amounts of merit pay increases and cash awards. In addition, OPM has attempted to collect data on the cost of contracts to develop merit pay systems but has had very little agency response since the merit pay system development is not a separately identified cost from other Reform Act costs. Agency input to development had usually been a small group of two or three employees working over a period of several months. The measure of effectiveness is being done as indicated in answers to the two above questions.

Question: How many departments plan a department-wide system versus delegating responsibility to lower levels?

Answer: Two departments have officially indicated their intent and gotten Office of Personnel Management to establish basic departmental policy for merit pay systems to be designed and implemented by subordinate organizations.

Question: Potentially how many different merit pay systems could be in use by October 1981?

Answer: While there are approximately 115 agencies that could design and implement one or more merit pay systems by October 1981, we expect most of these to be one or two common types for which OPM has set broad parameters.

Question: Are there any aspects of merit pay that should be standardized Government-wide?

Answer: Title 5 of the federal statutes and OPM regulations already provide standardization in key aspects of agency merit pay systems. Examples include amount of funding available, timing of pay increases and reliance of CSRA-based performance appraisal systems. Currently, Governmentwide pay administration rules are also under development at OPM. In areas where flexibility exists (such as the specific model for linking merit pay increases to performance appraisals, or determining the reasons for an amounts of cash awards), agencies have developed different approaches to merit pay that, in their opinion, are more responsive to individual agency needs to attract, motivate and retain a productive workforce. Therefore, there are no additional areas for standardization that we would recommend at this time.

Question: How can equal pay for equal work and equal opportunities for cash awards be assured when merit pay systems differ within and between agencies?

Answer: The current system most clearly does not provide equal pay for equal work, since it offers the same rates of pay to employees with greatly differing levels of performance. The purpose and intent of merit pay under CSRA clearly is to recognize and achieve equal pay for equal performance and the Office of Personnel Management (OPM) prescribes the regulations to carry out that goal. Our primary assurance to Congress is that OPM is regulating and offering extensive guidance to enable agencies to approximately 19 percent of all GS-13 through 15 employees are discussing preliminary merit pay plans with OPM staff.

Question: How many agencies plan to start their merit pay systems before the mandated October 1981 deadline?

Answer: Eight agencies have officially indicated their intent to implement a merit pay system on October 1, 1980. These agencies are:

Office of Personnel Management
Dept. of Health, Education and Welfare
Farm Credit Administration
Small Business Administration
Commission on Civil Rights
Civil Aeronautics Board
U.S. Metric Board
Selective Service

Question: Do you think they will all be able to meet the deadline?

Answer: Yes.

Question: How will you evaluate the merit pay system objectives of increased efficiency, productivity, timeliness, and quality?

Answer: The Office of Personnel Management has developed a five-year evaluation strategy to examine the reform from three broad perspectives which, taken together, should permit considerable understanding of what has changed and why. The first perspective consists of gathering government-wide information on the operation and short-term effects of each of ten major reform provisions. The second perspective consists of intensive case studies of the effects of implementing each of four major reform provisions (The Senior Executive Service, new performance appraisal systems, merit pay and performance-based discipline) in individual agencies or sub-agency units. The third perspective, which includes organizational assessments, examines the effects of Civil Service Reform as a whole. It represents an effort to document not only the implementation of single reform provisions but also the interactions among the provisions--in a limited number of sites--and their effects on productivity and quality of service.

Question: What method will be used to insure the system is working properly?

Answer: At present, Office of Personnel Management (OPM) is monitoring the implementation of merit pay at each agency. Upon implementation OPM will analyze the merit pay increases to determine if they are being made in a fair and non-biased manner in direct relationship to the performance of the employee rather than in relationship to non-job related factors. This analysis will cover the distribution of merit pay amounts and such non-job related factors such as sex, age, minority status, location and grade level.

Question: What type of data is being collected to measure cost and effectiveness?

achieve the compensation goal of pay for performance through whatever procedures they feel are necessary to best fit their agencies' needs. Agency plans must be approved by OPM, and so, must be in line with the intent of CSRA and OPM regulations before they can be implemented. OPM regulations include specific provisions to impose consistency and fairness in all components of the merit pay process, i.e., the estimation of appropriate funding; a sound performance appraisal program to provide the basis for merit pay; a systematic approach to the distribution of funds and the development of cash award policies. At this time we see agencies taking different approaches, but the critical issues, methods and goals are, and must be, consistent with the purpose and intent of the Merit Pay System.

There is no single most appropriate merit pay system for carrying out the provisions of the law since merit pay and performance appraisal are supposed to help agencies carry out their mission and improve productivity. It is perfectly normal for merit pay systems to vary between agencies or components of agencies.

Question: Since merit pay is being imposed on a group of people, do you anticipate any particular problems with employee acceptance?

Answer: Merit pay covers only supervisors and management officials in grades GS-13, 14, and 15, and because of this potential coverage, some problems are anticipated between covered management employees and nonmanagement employees in the same pay grades. Both types of employees will want to track the system to compare pay rates that would have been received (greater or smaller) under the general schedule versus those awarded under the merit pay system.

Question: What measures are being taken to combat resistance?

Answer: Several actions have occured or will occur in the near future to assist in employee acceptance of merit pay. First, the Office of Personnel Management (OPM) and the agencies have published general information and are conducting briefings on the purpose and intent of merit pay to increase understanding of the system. Some examples include a video tape and merit pay employee handbook prepared by OPM for agency use. Agencies obtained sufficient copies of the handbook to assure that virtually every merit pay employee and his/her manager receives one. Second, training in the operation of an agency merit pay plan, including employee roles and responsibilities, has already taken place in a few agencies as plans are approved. This training will directly focus on the employees' concerns and tendencies to resist a major change in compensation. Finally, OPM is encouraging agencies to simulate performance appraisal evaluations and merit pay increases before actually operating the system. This will eliminate or reduce operational and design problems and will give employees more confidence in the new system.

Question: Will incentive awards be used to supplement SES bonuses and/or merit pay?

Answer: For merit pay, cash awards (similar to incentive awards) will be used in addition to merit pay increases to provide agency managers the flexibility to recognize performance that otherwise could not be recognized through the normal operations of the merit pay system.

SAVINGS FROM EARLY OUT RETIREMENTS AND CLAIMS

Question: A federal employee may retire earlier than normal when his agency is undergoing a major reorganization, reduction in force or transfer of function affecting at least 5% of the agency's positions by abolishment or transfer. Currently there is a tremendous backlog of retirement claims waiting on final adjudication; the processing time required to settle a claim has nearly doubled over the last year partly as a result of high staff turnover and severe shortages of trained personnel. In view of the budget savings that result from early out retirements, why had OPM staffing totals been allowed to drop to levels inadequate to keep pace with incoming work? Have plans been made to rectify this situation?

Answer: The shortage of trained adjudicators is the result of failing to staff at a level which anticipated the effects of inevitable hiring freezes, rapid turnover, and increases in program complexity. As a first action to correct the problem, we hired 50 new adjudicators last fall and they are now trained and processing claims. Next, we detailed former claims examiners from several offices within OPM back to the retirement program to process claims for the next three months. We are also authorizing substantial overtime. In addition to these short-term staffing measures, we have supplemented our staff with 100 additional adjudicators who will be trained over the next several months.

ALMOST 30% OF FEDERAL WORKERS RETIRE ON DISABILITY/ ACTION NEEDED BY OPM

Question: GAO has issued several reports on the disability provisions of the Civil Service Retirement System. Such retirements have added substantially to the system's costs. At the end of fiscal year 1978, approximately 323,000, or about 28%, of all retirees under the system were retired on disability and receiving annuities totaling about $2.2 billion annually. By the end of fiscal year 1979, these numbers had increased to 333,000 disability retirees receiving annual benefits of $2.5 billion. GAO expressed several concerns about the program, but their basic message was that it is highly questionable whether all these retirees were incapable of further government service. Does OPM agree with GAO that disability reforms are needed? What corrective actions are underway?

Answer: In response to questions about our disability program from both GAO and the Subcommittee on Civil Service and General Services, we undertook a staff study of the program. The study has been distributed to various government agencies for their responses to certain recommendations that would effect our agency's management of its personnel.

Several of the study's recommendations have been introduced by Senator Pryor as S2449, a bill that was supported by both OPM and GAO in testimony before Senator Pryor at a hearing held April 16, 1980. The bill would prohibit employees who are eligible to retire under other provisions of law from retiring for disability; it would tighten the test for restoration to earning capacity; and it would authorize OPM to get information from other Federal benefit programs to better monitor the income and other benefits of disability annuitants.

We are already making and planning to make a number of changes in the way the program is administered. We believe these changes, together with those proposed by S. 2449, will substantially improve the program and eliminate the problems perceived by GAO over the last few years. We have, for example, reemphasized our review procedures so that we are reviewing more closely the determination of disability, and the documentation from agencies, to insure that disability retirement is approved only when a deficiency in service is identified, and a medical problem has demonstrably interferred with the employee's performance to such a degree that he or she is in fact disabled for the position. These changes are having a striking effect on the number of potential disability retirements. Our records on the initial rejection rate for disability applications show that before FY1980 about 8% of the applications were rejected; in the first 24 weeks of FY1980, the rate was 20%; and, in the last two months, the rejection rate has risen to 30%. Obviously, if these trends continue, there will be substantial savings and a substantial reduction in the number of disability retirements.

Question: Describe the actions taken to find a disabled employee other work that he or she can perform as an alternative to disability retirement.

Answer: Agencies are instructed that, when they note deficient performance by an employee and establish that the deficiency is directly related to a medical condition, all efforts should be made to place the individual in another position in which he or she could perform. Agencies are further instructed that placement efforts, either within the same agency or another agency, should be exhausted before consideration is given to the submission of an application for disability retirement.

First, the supervisor should attempt to find a position within his or her jurisdiction to which the employee could be reassigned. If there are none, the case is to be referred to the agency coordinator for the employment of the handicapped for consideration of reassignment or retraining. If there are no appropriate positions within the coordinator's jurisdiction, the coordinator should explore for job opportunities with other agencies in the same geographical area.

A reminder of these procedures, a reemphasis on their importance,is currently being prepared because we share the concern of GAO and the Congress that agencies are doing too little to find alternative positions for employees in lieu of disability retirement. It needs to be remembered, however, that under current law, a disabled employee is not required to accept a reassignment rather than retire, so agencies are limited to offering alternative positions and cannot prevent the employee from retiring.

Question: One major GAO concern was that employees are allowed to exhaust their sick leave balances after their disability retirement applications are approved. What action is being taked to stop this costly abuse?

Answer: We would point out, first, that under the current system if employees were prohibited from using sick leave after approval of disability retirement, they could circumvent the prohibition by not applying for disability until their sick leave was almost exhausted.

The issue of exhausting sick leave prior to actually retiring on disability actually involves our sick leave program rather than our disability retirement program. A study of the sick leave system has been made recently, but recommendations have not yet been formed. We are in the process of writing a report that will address the question as well as others that have been raised about the current provisions governing sick leave.

Question: How many retirees are removed from the disability rolls in a typical year because they are either medically or economically recovered?

Answer: In FY 1978, 1258 disability annuitants were terminated for medical recovery or restoration to earning capacity. In FY1979, the number was 1265.

We would note in this connection that S. 2449 would authorize OPM to get information from Social Security on the yearly earnings of disability annuitants to help us better monitor the disability roll for restoration to earning capacity.

Question: OPM has requested $2.8 billion to be appropriated to it for transfer into the Civil Service Retirement and Disability Fund. An additional $8.8 billion will be transferred into the fund through permanent OPM authority. The total income projected to be contributed to the Civil Service Retirement and Disability Fund in fiscal year 1981 is $25.9 billion which compares to total outgo from the fund of $16.9 billion. The balance in the fund at the end of fiscal year 1981 will be $82.3 billion (President's Budget p. 949) and the total payments from the fund for fiscal year 1981 will be $16.9 billion. In other words, the fund has approximately 5 times the amount of resources in it as are needed for payments in fiscal year 1981. In view of the large fund balance, what is the purpose of continuing to capitalize the fund at the rate of almost $26 billion a year as long as the Federal Government pledges to meet the annual funding requirements which now run at approximately $17 billion a year?

Question: What is the value in building the fund to such large totals?

Question: If no additional appropriations were made into the fund in Fiscal year 1981, ample resources exist to meet all obligations the Federal Government could incur in Fiscal year 1981. Is that correct?

Answer to above three questions: You correctly point out that the projected income to the Civil Service Retirement fund for fiscal year 1981 is more that would be needed to pay annuitants in that year. The situation occurs because it is necessary to plan today to meet the long term costs of the Civil Service Retirement System. Eliminating the 1981 government contribution would lead to a pay-as-you-go system and, because the CSR fund is held by the government, has no effect on the governments' total financial picture.

The CSR system is financed according to provisions set up by Congress in 1969 in Public Law 91-93. Our request for $2.8 billion is made to meet the requirements of these provisions. CSR funding has been criticized in recent years by the Board of Actuaries, the General Accounting Office and others for not building up enough of a fund. Our projections show that current funding will build a fund that is sufficient to guarantee payments over the next 75 years but it does rely on an increasing government contribution as a percentage of payroll. The Board and GAO would provide for even higher contributions that would be level as a percent of payroll.

On February 4, 1980, we sent the latest report of the Board of Actuaries to Congress. We agreed that the Board's concept was sound and we offered to assist Congress in considering the proposal. We commend the Board's report as an excellent explanation of the underlying system and would be happy to provide copies if they are needed.

Question: Please provide the committee with an analysis, by quarter, of the financial condition of each of the experience rated carriers that had subscription income in excess of $25 million in calendar year 1978. The analysis should indicate Payments Received; Accounts Receivable; Claims Expenditures, Accounts Payable; and Balances on Hand, both cash and investments.

SUMMARY OF FINANCIAL OPERATIONS - CALENDAR YEAR 1979
Plans With Subscription Income Over $25 Million (in millions)

	10 Blue Cross Blue Shield	20 Aetna	30 AFGE	31 GEHA	32 NALC	36 Post-masters	38 Rural Letter Carriers	45 Mail Handlers	46* National Alliance	47 APWU	TOTAL
Subscription Income:											
Semi-monthly	1662.2	340.1	23.6	58.9	182.7	43.7	37.1	59.7	96.7	206.1	2710.8
Cont. Reserve	81.9	---	1.5	---	4.0	0.6	---	0.1	0.1	7.4	95.6
Beginning Accrual	(150.0)	(30.5)	(1.5)	(4.4)	(13.9)	(1.8)	(2.6)	(4.3)	(8.0)	(16.1)	(233.1)
Ending Accrual	157.2	31.4	2.3	5.7	16.1	4.1	3.2	5.6	9.1	18.0	252.7
TOTAL	1751.3	341.0	25.9	60.2	188.9	46.6	37.7	61.1	97.9	215.4	2826.0
Health Benefits:											
Paid	1696.1	349.7	21.8	55.1	187.7	44.7	35.7	45.4	90.3	192.7	2719.2
Beginning Accrual	(380.7)	(95.9)	(5.8)	(10.6)	(39.5)	(7.2)	(8.3)	(11.8)	(23.0)	(42.5)	(625.3)
Ending Accrual	428.2	105.4	8.4	16.4	49.9	9.6	10.2	12.7	27.5	57.8	726.1
TOTAL	1743.6	359.2	24.4	60.9	198.1	47.1	37.6	46.3	94.8	208.0	2820.0
Expenses and Retentions:	102.2	24.7	2.1	3.7	10.8	1.8	2.1	5.3	8.2	12.0	172.9
Special Reserve:											
Gain or (Loss)	(94.5)	(42.9)	(0.6)	(4.4)	(20.0)	(2.3)	(2.0)	9.5	(5.1)	(4.6)	(166.9)
Investment Income	36.9	6.7	0.5	1.6	4.7	0.3	0.9	1.6	1.0	4.3	58.5
Spec. Res. Beg.	300.4	62.7	1.5	10.9	27.5	0.9	6.5	10.0	1.4	14.6	436.4
Spec. Res. End	242.8	26.5	1.4	8.1	12.2	(1.1)	5.4	21.1	(2.7)	14.3	328.0
Beg. Cash Balance:	(0.8)	(3.4)	0.3	(1.1)	0.4	---	(0.01)	---	0.5	0.3	
Ending Cash Balance:	(1.2)	(2.5)	0.5	(1.7)	1.4	---	(0.06)	---	0.5	0.8	
Beg. Invest. Bal.:	495.3	130.5	5.5	18.3	52.7	6.2	12.2	17.4	16.0	40.7	
End. Invest. Bal.:	483.0	104.0	6.9	20.5	44.6	4.3	12.3	28.1	15.2	53.6	

PACE AND OTHER SELECTION PROCEDURES

Question: According to GAO's May 15, 1979, report (FPCD-79-46), during Fiscal Year 1978, approximately 135,400 individuals took the PACE written test, and of that number 7,587 people were hired. At that time, I believe PACE was used to test for 118 different occupations in the Federal Government. What are your projections for Fiscal Year 1980 in terms of the number of people who will be hired from PACE registers? Also, for how many occupations is the test currently being used?

Answer: We estimate that 5,000 selections will be made from PACE in FY 80 into 116 occupations.

Question: Despite the statistics reported by GAO concerning the percentages of white and blacks who received certifiable scores on PACE--16% of whites and less than 1% of blacks who took the examination--GAO seemed to indicate in its report that OPM's research had shown a very strong correlation between performance on the test and later performance on the job.

We understand that OPM is now encouraging agencies to use alternative selection procedures, and currently has a joint project with the Social Security Administration for evaluating the use of an alternative selection procedure. From a statistical standpoint, using the alternative selection procedures, are whites and blacks receiving certifiable scores at a closer proportionate rate than the PACE statistics indicated?

Answer: The Uniform Guidelines on Employee Selection Procedures implemented the Federal Equal Employment Opportunity Act of 1972, by requiring that Federal employers eliminate discriminatory selection procedures, unless justified by business necessity (i.e. there is no suitable alternative). In situations where "business necessity" cannot be justified, agencies are required to consider alternative selection procedures with less adverse impact.

The Social Security Administration has developed an alternative examination for its Social Insurance Claims Representative positions at the GS-5 level. The title of the examination is the Claims Representative Examination--Social Security (CRESS). CRESS is an effort to reduce the adverse impact resulting from the use of the PACE written test, while ensuring the selection of qualified candidates based on their relative abilities. We are working closely with the Social Security Administration to evaluate the results of this experimental procedure. The Social Security Administration is in the final stages of establishing its list of eligibles for CRESS. Data on the distribution of eligibles on the register should be available by the end of June. Until the time the CRESS registers are established, PACE registers are being used to fill Social Insurance Claims Representative positions at the GS-5 level. PACE registers are, and will continue to be, used to fill Social Insurance Claims Representative positions at tne GS-7 level.

It should be noted that the Federal Deposit Insurance Corporation has also developed an alternative examination for its Bank Examiner positions at the level equivalent to GS-5. It is also in the final stages of establishing its list of eligibles for those positions.

Data on the distribution of eligibles on its registers should be available by the end of June also. Until the time its registers are established, PACE registers are being used to fill Bank Examiner positions at the level equivalent to GS-5. PACE registers are, and will continue to be, used to fill those positions at the level equivalent to GS-7.

The preliminary data on eligibles in both examinations indicate a much better representation of minorities in the applicant pool than in the PACE examination.

Question: What research has OPM -- or agencies -- done to determine whether the alternative selection procedures show the same strong correlation between performance on the selection procedures and subsequent job performance?

Answer: As part of our work with the Social Security Administration to evaluate the results of the use of the alternative procedure, we have made plans to compare the job performance of employees selected under the new alternative procedures with those of employees previously hired from PACE. Comparison data of that nature will not be available until appointments have been made from the list of eligibles resulting from the alternative examination and the new employees have worked in their positions a sufficient length of time. An adequate assessment of performance can only be made when the employees are performing at the full performance level.

Question: If the same strong correlation is not shown, or if OPM doesn't know whether the alternatives are highly predictive of job performance how can OPM be sure that, to the maximum extent possible, the Government is hiring the most qualified applicants?

Answer: We cannot assess the success of persons selected through the alternative examination until we have job performance data. However, the alternative examining procedures used for the CRESS examination are demonstrably job-related. In the CRESS examination, only those persons who are determined to have the best experience and/or education for the position and who were ranked the highest during a structured interview will be assigned the highest numerical ratings. The selections will be made from among those candidates who were rated as most highly qualified for the position. If individuals selected from the alternative list of eligibles do not perform on the job as well as those selected from PACE registers, the alternative examining procedures will be examined to determine what modifications are necessary.

Question: OPM researchers have estimated that, depending on a number of variables -- for example, the size of the applicant pool relative to the number of vacancies, the validity of the test, and the productivity of those selected by some other method -- the use of PACE could increase Federal workforce productivity by $53 million to $1.2 billion annually. I recognize that this is a wide range, but even the lower figure is substantial.

If the alternative selection procedures OPM is proposing for agencies to use are not as "valid" as PACE, do these figures represent additional cost to the Government for using alternatives to PACE?

Answer: Yes. However, the "validity" of the alternative selection instruments has not yet been determined. Until validity determinations are made, the productivity estimates of the alternatives cannot be compared to those estimated for the PACE examination.

Question: We understand that OPM once estimated that the cost of using PACE as a screening device was about $20 per applicant. What are you estimating as the cost per applicant for the screening and selection procedure being experimented with at the Social Security Administration -- the question is, are the benefits worth the added cost?

Answer: We do not have cost data on the CRESS examination. However, the Social Security Administration is responsible, under a delegation agreement, for tracking such information. Once it has finished the examination processes, it will be able to report final costs. We have requested cost figures, to date, from the Social Security Administration; we will forward its response to you when we receive it. Our experience indicates that an examination which does not use a written test is more expensive to administer. Our experience has also shown that adverse impact may be reduced through the use of alternatives to a written test. The additional costs which are incurred must be considered in light of our imperatives, under the Civil Service Reform Act and the Federal Equal Employment Opportunity Act of 1972, that the Government achieve representativeness in our workforce while continuing to select from among the best qualified individuals. They must also be considered in light of requirements specified in the Uniform Guidelines on Employee Selections procedures which were cited previously. It is not within our discretion to determine if it should be done, but rather, to do it in a manner which is as cost-effective and productive as is possible. To that end, we will continue to work with agencies in developing and testing more economical nontest methods and administrative procedures to the extent that our resources permit. The GAO report (FPCD 79-46) also reenforced the need for OPM to continue to search for alternative selection procedures which have less adverse impact.

Question: I seem to recall an OPM press release dated March 1, 1979, which said that the U. S. GNP could jump by as much as $100 billion a year if employers used more valid procedures for selecting employees. Shouldn't the Federal Government be a leader in this area and use screening and selections instruments which have the highest predictive value?

Answer: This Administration is committed to the employment policy expressed in the merit principles contained in the Civil Service Reform Act. The first principle states:

> Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assumes that all receive equal opportunity.

OPM is now, and plans to continue to be, the leader in the area of selection with the highest predictive value. The OPM press release was based upon research done in OPM. We are dedicated to achieving a comparable position of leadership in the parallel principle of representativeness. OPM will monitor selection procedures and will determine whether they should continue to be used, modified, or eliminated.

MANAGEMENT DEMONSTRATION AND RESEARCH PROJECTS

Question: The Agency has requested a $530,000 increase for management demonstration and research projects in fiscal year 1981. This represents approximately a 75% increase in funding available for demonstration and research projects in 1981 over the level available in fiscal year 1980. What is the need for such a rapid increase in funds for demonstration and research projects?

Answer: In absolute terms, the increase for FY 1981 is not that significant. With total resources of approximately $1.1 million, this program will be a modest program when compared to other research programs. The increases for FY 81 will help us to fund projects that were started in FY 1980 and some additional high-priority research needs. We are carefully targetting our research efforts into those areas which will have a high payoff in terms of the type of guidance and assistance we provide to agencies. Special priority has gone to those research efforts that will impact on the implementation of the CSRA.

Question: Specifically, what projects does the agency propose to undertake in fiscal year 1981?

Answer: See Attachment #1

Question: Please discuss the need for such projects and the expected benefit the results of such projects will provide to the Federal government.

Answer: See Attachment #1

Question: What has OPM done to assist agencies in these efforts?

Answer: We have relied very heavily on a variety of agency inputs (Ocean City, Brookings, and Cherry Hill Conferences; contacts through the Agency Officers and IAG, etc.) in developing our funding priorities. Our funding priorities and research agenda will receive agency review.

Attachment #1

TITLE VI RESEARCH AND DEVELOPMENT: OVERVIEW

Throughout this year we have made a significant and continuous effort to get input from federal managers, public management researchers, and other outside experts regarding the most appropriate and beneficial use of Title VI funds.

There has been almost complete agreement that our plans and priorities for Title VI funds must be built around real problems being encountered by real managers.

After gathering input from such sources as the Ocean City Conference, the Brookings Conference, the Employee Attitude Survey and the Cherry Hill Conference, in addition to the personnel community and outside selected experts, we have developed a list of priority policy and program concerns against which we are proposing specific projects for FY 80 and FY 81. Our priority areas for FY 80 included: Performance Appraisal, Productivity, SES, Recruitment, and Special Programs. Projects emphasize gathering basic data and getting highly useful technical guidance to agencies. We anticipate a number of projects to be continued in FY 81 plus the addition of testing prototypes and applications. For FY 81 we are also adding a priority concern which is "Developing Middle Managers and Staff Specialists".

Specific areas of priority concerns and research are as follows:

1. Providing technical guidance to agencies relative to the accuracy and quality of performance appraisal.	(1) Assessing accuracy of measures/models and systems.
	(2) Comparison of appraisal systems and models.
	(3) Grouping jobs for common appraisal systems.
	(4) Impact of observational opportunities on improving the quality of appraisal systems.
	(5) Testing accuracy of prototype performance appraisal.
2. Providing technical guidance and models to agencies relative to linking individual and group performance.	(1) Assessment of the relationship between aggregated appraisals of individual performance and organizational effectiveness.

	(2) Evaluating impact of changes in performance appraisal system on organizational effectiveness.
	(3) Controlled tests for linking individual and unit performance appraisal.
3. Providing technical guidance and models to agencies relative to the use of incentives and management interventions to increase employee productivity.	(1) Testing incentive management strategies.
	(2) Assessment of employee counseling programs.
	(3) Testing the use of organizational teams to improve productivity.
	(4) Using appraisal as a developmental tool to improve productivity.
	(5) State-of-the-Art Papers on selected productivity issues.
	(6) Targetted productivity projects for selected occupations.
4. Providing guidance and models to agencies relative to the development of senior executives.	(1) Analyze the career paths of successful executives.
	(2) Assess the functioning of the Executive Resource Boards.
	(3) Testing executive development models.
5. Improving the recruitment process so that agencies can expedite the hiring of qualified candidates.	(1) Forecasting intermediate and longer range Federal personnel requirements:
	(2) Testing application of private sector recruitment models.
	(3) State-of-the-Science papers on the utility of written tests, other

	selection instruments, and combinations of selection instruments.
6. Improving the efficacy of affirmative action and handicapped programs.	(1) Comparative Assessment of efficacy of upward mobility programs.
	(2) Testing upward mobility models and prototypes.
	(3) Development of fair alternative selection procedures for the handicapped.
7. Developing middle managers and staff specialists.	(1) Series of studies on potential impact of mid-life crisis on middle managers.
	(2) Forecasting studies on impact of post World War II baby boom on the Federal service.
	(3) Testing organizational prototypes for "sharing-the-action".
	(4) Targetted assessments of middle-manager developmental needs.
	(5) Testing application of private sector developmental programs.
	(6) Testing various methods of assessing management strengths and weaknesses.
	(7) Assessing effectiveness of key federal management occupations such as federal negotiators.

Analysis of Problems:

Most of the areas that we are picking for the study are significant for two reasons: (1) they are areas in which agencies are investing considerable resources (such as performance appraisal, SES, and productivity) largely based on assumptions about the most effective ways to proceed; and (2) they are areas in which there is a high potential for improving the effectiveness of government operations. In stimulating better management and thereby more effective programs, we must recognize that there are some genuine knowledge gaps. For the short term, these gaps are being bridged by what appear to be the most reasonable operating assumptions. But we need to move beyond this point (and do so quickly), since in many cases we simply do not know what the best strategy, approach, or practice should be. For example, we need to know:

(1) What are the best means for ensuring accuracy and consistency in measuring performance?

(2) How can we best link group performance to individual performance?

(3) What management strategies, interventions, and incentives have the highest potential of improving workforce productivity?

(4) What kinds of developmental programs and experiences have the highest potential of improving (and developing) executive competencies?

(5) What are the most effective ways to recruit and match qualified applicants and jobs?

(6) What kinds of programs and strategies have the highest potential of increasing the effectiveness (and thereby leverage over the workforce) of our middle managers?

Each one of these questions is not of course susceptible to a definite set of answers. However, for each one, we can start zeroing in on the key factors, significant causal relations, and pertinent correlations. The next step will be to test applications and prototypes. Such steps will significantly improve the odds for devising strategies and approaches that will favorably impact on the effectiveness of the Federal workforce.

$1,080,000 REQUESTED BY OPM TO EVALUATE IMPLEMENTATION OF THE CIVIL SERVICE REFORM ACT

Question:	OPM has requested $1,080,000 to evaluate implementation of the Civil Service Reform Act. Please describe for the committee OPM plans for evaluating the results of Civil Service Reform Activities.
Answer:	See Attachment #2

Attachment #2

CSRA EVALUATION ACTIVITIES: OVERVIEW

Purpose: The Civil Service Reform Act requires reports to Congress on the effectiveness of the Senior Executive Service, the Federal Equal Opportunity Recruitment Program, the merit pay system and cash award program, and the research program and demonstration projects authorized under Title VI. In order to provide the required information as well as ongoing indications of the progress, problems and impact of civil service reform more generally, the Office of Personnel Management has initiated a five-year evaluation program. The program consists of a number of different evaluation approaches. These approaches will enable OPM to determine what agencies are doing to implement the various provisions of the CSRA and to understand what differences the reforms make in employee behavior and government operations. The approaches consist of the following:

1. Case Studies: These consist of longitudinal in-depth examinations of the implementation and effects of one important CSRA provision in a limited number of organizational units. Case studies are being conducted on a) performance appraisal, b) employee relations, c) merit pay, and d) the Senior Executive Service (SES).

2. Federal Employee Attitude Survey: This is a questionnaire that was distributed beginning in May, 1979 to more than 20,000 Federal employees to determine baseline attitudes and perceptions concerning their jobs, the climate at their agencies and the fairness and usefulness of various personnel management practices. It is the first comprehensive, systematic survey of Federal workers' attitudes toward their jobs and workplace. Present plans call for a second mailing of the questionnaire to determine what changes may have resulted from the reforms. (Separate background material is included on the survey.)

3. Record Reviews: This consists of a periodic examination of records (e.g., those of MSPB as well as the Central Personnel Data File and other information systems), agency plans (e.g., performance appraisal plans), and reports.

4. Special Studies: These are before and after studies of particular topics relating to CSRA across 35 to 75 agency sites. The topics to be addressed by this approach include the delegation of personnel management authorities, merit pay, performance appraisal and classification accuracy (grade and pay retention provisions are expected to increase classification accuracy).

5. Organizational Assessments: These consist of intensive examinations of the implementation, interactions among and effects of six important CSRA programs in a limited number of organizational units over five years. (Separate background material is included on organizational assessments.)

More specifically, our activities for using the $1.08 million are estimated as follows:

Activity	Amounts
Evaluations to determine what agencies are doing to implement specific reform elements that OPM is not mandated by CSRA to evaluate but that we believe it is important to examine, i.e.	
a) Examination of the different performance appraisal techniques and methodologies being used to determine which are more effective in various types of jobs and situations.	$ 375K
b) Examination of the nature of the relationships between political and career executives to determine if they have improved, and the extent to which there is abuse of the SES.	$ 225K
c) Examination of the extent to which performance appraisal elements and standards of senior executives, managers, supervisors and employees are consistent with each other, and whether such consistency results in improved productivity.	$ 150K
d) Examination of the effects of the CSRA on the hiring of women and minorities in government and production of an integrated statement and report.	$ 150K
e) Examination of the frequency of use and outcomes of negotiated grievance procedures in selected agencies as compared with administrative appeals procedures.	$ 90K
f) Examination of whether the emphasis of merit pay on individual effectiveness creates a competitive milieu that interferes with organizational effectiveness.	$ 90K
TOTAL:	$1080K

Question: Has the Government-wide cost of evaluating the changes from Civil Service Reform Act (all agencies) been projected?

Answer: Agencies are still thinking through their evaluation plans, so costs cannot be projected yet. OPM will be visiting major agencies and developing a tracking effort Government-wide of evaluating activity which should permit cost projections to be made within the coming year.

PURCHASE OF FURNITURE

Question: How much is included in the FY 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget?

Answer: The purchase of furniture was not specifically budgeted as a line item in either the FY 1981 or FY 1980 budgets. However, actions are now being taken to establish two new object classifications in our accounting system to track future furniture expenditures.

REIMBURSABLE ACTIVITIES

Question: The Civil Service Commission conducted several Reimbursable Activities-(i.e., Investigations and Training Programs). Under the Civil Service Reform Act, OPM has created several new offices for consulting services and for providing Technical Assistance to agencies. Have the number and type of Reimbursable Programs been greatly increased under the Civil Service Reform Act?

Answer: No. Although some reimbursable increases will be experienced from the establishment of the Temporary Appointment Program (TAP), no major increases have been mandated or otherwise created by or since the establishment of the CSRA.

GRADE CREEP WITHIN THE FEDERAL GOVERNMENT

Question: On June 30, 1960, the average grade for full time GS employees stood at 6.7. On June 30, 1970, the figure had become 7.9. Last year the Committee was told the OPM projects the average grade to be 8.1 on June 30, 1980. In other words, there has been a 20% grade creep in approximately 20 years. What has OPM done in the last year to reverse grade creep in the Federal Government?

Answer: The June 30, 1980, projection was made at the request of the Committee and is not a recurring OPM effort. Tracking the average grade is a shared responsibility with OMB. We are continuing to make this data available to OMB from our Central Personnel Data File (CPDF) to assist them in controlling the growth of average grade in selected occupations and to set reduction targets for those series where average grade creep has been exceptionally high. Our role has been primarily in the identification of misclassified positions and providing position management assistance to agencies during our evaluations. The objective is to influence agency managers to design efficient organizations in terms of work and grade.

Question: In a 1978 GAO report on the accuracy of position classification under the General Schedule it was found that almost 20% of the positions surveyed were misclassified with 11% being overgraded. To what extent are agencies correcting overgrading by restructuring overgraded positions, downgrading, or eliminating positions?

Answer: OPM's predecessor agency, the Civil Service Commission, issued the report on classification accuracy of white collar positions in the Executive Branch. The classification accuracy study is one of numerous methodologies used by OPM to evaluate agency classification programs. A follow-up to this special study is planned during fiscal year 1981. Whenever OPM special studies or recurring reviews reveal misclassified positions, agencies are formally notified of the findings and given the opportunity to rebut or correct the errors. Agencies usually have the option to correct the errors by reassigning the employee or by adding duties which support the grade of the affected position. Downgrading is used as a last resort. If an agency fails to take the proper action in a timely manner, OPM issues a binding certificate which directs correction of misclassified positions. Statistics are not maintained on the final disposition of misclassified cases. In addition to our recurring evaluations of agency classification programs, other special efforts have been taken to strengthen the classification program. We are currently conducting a classification accuracy study of blue collar occupations. Since the passage of the Civil Service Reform Act of 1978 agencies have been required to develop classification and placement plans committed to the identification and correction of classification errors. During our recurring classification reviews, we have been monitoring the application of these plans, directing corrective action when warranted, and providing classification assistance when requested.

NEED FOR OPM REGIONAL OFFICES

Question: OPM recently reorganized each regional office to meet the specific needs and plans of the individual office as determined by the regional director. Each regional office will have one or more agency relations persons.

What are the most important functions of OPM's regional office?

Answer: OPM's regional offices are responsible for program delivery to Federal agency installations in the field. Each of the ten regional offices has the same basic functions; at the same time each regional director is responsible for establishing, within available resources, an organizational structure which effectively meets local interests and needs for delivery of OPM services in the following areas:

- Agency relations and assistance
- Agency compliance and evaluation
- Workforce effectiveness and development (training, consulting services, productivity improvement)
- Staffing and employment (recruiting, examining, job information, personnel investigations)
- Affirmative employment
- Labor-management relations
- Intergovernmental personnel programs
- Employee benefits services and occupational health .

Question: How different is this from before the Civil Service Reform Act?

Answer: OPM's regional offices have always been the focal point for delivery of services and assistance to Federal field installations; the differences lie in the initiation, as part of the Civil Service Reform Act implementation effort, of major new (separate and identifiable) assistance efforts (e.g., agency relations and assistance, consulting services, productivity improvement) and the re-direction of existing programs to meet the intent of reform (e.g., delegations of examining authority to Federal agencies).

Question: How much regional time is spent working with agency offices? In what areas?

Answer: The majority of regional time is spent in this fashion since the primary purpose of OPM's regional network is to deliver services to agency field offices in such areas as: staffing and employment, affirmative employment, labor-management relations, workforce effectiveness and development, etc.

Question: How do OPM regional agency officers relate to:

- o Headquarters agency officers;
- o Headquarters compliance staff;
- o Regional compliance staff; and
- o Technical specialist (e.g., staffing, SES, and workforce effectiveness) agency officers?

Answer: Regional agency officers have direct (i.e., free and open) access to headquarters agency officers. Contacts with headquarters compliance staff would most likely be made through the regional compliance staff. Contacts with regional compliance staff, as well as with regional technical specialists, would be made directly. Contacts with central office technical specialists would most likely be initiated through the corresponding regional technical specialist. In any event, there is a free and open flow of communication, whether within the region or between the region and the central office, so that those with assigned agency responsibilities (agency officers) and those with program responsibilities (program or "technical" specialists) can work together to help solve agency problems.

DELEGATION OF OPM AUTHORITIES

Question: Civil Service Reform provides for delegation of authorities to agencies for implementation of appropriate personnel actions in the interests of efficiency and increased managerial effectiveness.

What criteria were used to determine which authorities should be delegated?

Answer: OPM reviewed all authorities that had to have prior OPM approval or could be delegated. OPM then consulted with its staff, agency managers and personnel officials, the Interagency Advisory Group, and labor organizations to determine which authorities could and should be delegated. Once these comments were incorporated into the final staff recommendations, OPM delegated all those authorities that, in its judgment, agencies could handle without prior OPM approval.

Question: Can OPM withdraw authorities if evaluations disclose abuse and inefficiency?

Answer: If OPM finds that an agency has taken an action under a delegated agreement contrary to law, rule, or regulation or standard, it may require the agency to take corrective action. If, in the judgment of OPM, the agency is not adhering to the provisions of the delegated agreement, it may revoke the agreement at any time.

Question: Why was blanket authority used to delegate some authorities and agencies are required to negotiate the other authorities under written agreement? Are all agencies requesting the negotiated authorities?

Answer: Blanket authorities were used for those items that agencies (1) could take on easily without adding a large workload or resource burden, and (2) that would least likely be subject to abuse. Delegated authorities were those that (1) required more technical expertise, (2) were more likely to have workload or resource implications for agencies, and (3) generally required more oversight by OPM.

OPM has approved 21 agreements, and an additional 23 are currently being considered.

Question: Is a perceived increase in workload without additional resources a factor?

Answer: No. Although agencies must monitor their use of delegated authorities, retain all documentation, and make periodic reports to OPM, they need no longer submit formal written requests for OPM's prior approval each time they wish to use the authorities. However, if agencies request delegation of examining authority, an increase in workload and resources would result.

Question: Are agencies encouraged to request these authorities?

Answer: OPM encouraged agencies to request these authorities in Federal Personnel Manual Bulletin 300-52. In addition, OPM's agency officers assist their agencies in developing agreements.

Question: What will be the budget impact if agencies do not request delegated authorities?

Answer: There will be little budget impact if agencies do not request delegated authorities. Money and time would be spent reviewing agencies requests for OPM's prior approval, instead of monitoring the agencies' use of delegated authorities.

INTER-AGENCY MOBILITY ASSIGNMENTS

Question: OPM has requested an additional $400,000 and 6 positions to support an inter-agency mobility program among members of the Senior Executive Service. Specifically, how will this program operate?

Answer: The request for $400,000 was actually for two programs. Approximately $250,000 of that amount would be used to provide leadership and assistance to agency executives, managers, and staff to speed implementation of executive and management development programs. The remaining $150,000 would be required to support inter-agency mobility among members of the Senior Executive Service (SES).

HELPING AGENCIES TO IMPLEMENT EXECUTIVE DEVELOPMENT

In Title IV of the Civil Service Reform Act, OPM is charged to establish or require agencies to establish programs for the development of SES candidates and for continuing the development of SES members. This is particularly crucial to the success of the SES, since within a few years most of the SES members will be products of candidate development programs.

To encourage the growth of executive development expertise in agencies, and to provide in Government an overall system capable of meeting the varying needs of agencies, OPM has delegated to the agencies development of their executive development programs within broad guidelines and standards. One result of that action, already taken, has been a need for OPM to help develop a system of cooperation and information exchange among agencies which, once established, will be somewhat self-operating. Another result has been the need for OPM to give the agencies major assistance for the initial design of new executive development systems. The $250,000 funding would help OPM fill a greater percentage of agency requests for assistance and to extend the expertise of the inter-agency network.

BROKERING EXECUTIVE MOBILITY

The Civil Service Reform Act further requires OPM to "encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector." Public administration literature has maintained that government agencies would be more effective if their executives had broader prospectives and were not so uniformly the inbred products of the institutions they would manage. Such inter-agency mobility does not, however, occur to any degree spontaneously.

OPM is attempting, with the $150,000 requested, to generate mobility opportunities and to locate individual executives for such assignments. In addition to "passive" systems for arranging mobility, such as a clearinghouse-type operation which provides information to job seekers on vacancies and which provides to agencies the names of qualified incumbent SES members who are available for reassignment, OPM would use the requested funding to support active brokering of executives who are interested in such assistance between agencies, State and local governments, and private industry.

NEED FOR ADDITIONAL FUNDING

Question: Why can't these increases be absorbed within the base?

Answer: Current staff resources in the Executive Personnel and Management Development Group of OPM number fewer than 40 professionals, not engaged in the direct delivery of training courses. These are fully committed to continuing workload requirements in the areas of SES implementation and operation (approximately 20 percent), executive personnel management oversight and evaluation (approximately 25 percent), technical assistance to agencies on all aspects of executive personnel management (approximately 40 percent), and policy development, research issuance of regulations, and developing a data base for reports and legal requirements (approximately 15 percent). We have attempted to operate a mobility program within these resources and have been forced to the conclusion that a greater commitment is essential if we are to have a viable effort. Equally, we are already assisting agencies in establishing executive development programs to the maximum extent of our resources, but we have not been able to meet the demand. Nor have we been able to establish an inter-agency self-help network.

EXECUTIVES' INTEREST IN MOBILITY

Question: As it has been explained to the committee, OPM will operate this program essentially by providing a brokering function attempting to learn of agencies that wish to participate in the program and thereby assisting in the rotational assignment of Senior Executive Service employees. Has OPM obtained information from the cadre of Senior Executive Service employees in the Federal Government indicating an interest in such a program?

Answer: The mobility brokering function covers two types of movement: permanent transfer to another agency and temporary assignment to another Federal agency or to such organizations as universities and State and local government. Over the years, we have had many indications of interest on the part of executives in both types of mobility. Recently, the Cherry Hill Management Conference provided OPM with more information as to the degree of interest among SES members in a mobility program. The amount of interest seems to be running quite high, especially for the permanent transfer aspect.

To ascertain with greater accuracy the full extent of this interest, at the present time, the Executive Personnel and Management Development Group of OPM is developing a questionnaire on mobility to be sent to individual career SES members in the near future to determine the individual's degree of interest and to seek responses to questions on the considerations which seem to be important in making a decision for or against mobility, permanent or temporary. Even without this full study, however, there is no doubt that considerable interest exists.

Question: Are SES employees likely to indicate an interest in mobility assignments, as this may impair their relations in their existing agency?

Answer: OPM's pilot program for facilitating mobility is geared toward generating mobility assignments which are, in most cases, to be proposed by the agency itself and mutually agreeable among the host agency, the employing agency, and the SES member. In addition, where circumstances dictate a different approach, OPM will accept applications from individuals without requiring them to come through their agency. In such cases, every effort will be made to preserve their relationships with their agency by allowing the individual to prescribe the circumstances under which the employing agency would be contacted for information.

MOBILITY VALUABLE AT THE SENIOR EXECUTIVE LEVEL

Question: Wouldn't a program of inter-agency mobility be more useful at the journeyman level or the middle-management level as opposed to the senior executive level?

Answer: It is more important to facilitate executive mobility since that is the level at which a senior executive needs a broader view of government operations than one derived from a single agency perspective. Such a program would not be as valuable at the journeyman or middle-management level because the perspective of agency operations is far narrower at those levels. Moreover, because the average length of a career in executive positions is 15 years (about 50 percent of an executive's total career), and because upward job change is less often possible at these levels, many executives become stale for lack of new challenge. Emphasis on facilitating inter-agency mobility should be focused on the levels of positions where the benefits to the government are greatest.

SES BONUSES

Question: The Civil Service Reform Act establishes a new set of awards for the Senior Executive Service to recognize superior service of career appointees.

Do you expect agencies to reach the 50% limit set on the number of SES bonuses awarded? Is any adverse impact anticipated on executive motivation and morale? Is funding a problem?

Answer: Our view is that in many agencies far more SES members will perform at levels warranting bonuses than can receive them under this limitation. The challenge will be to distinguish between the outstanding performers for this purpose. Some agencies fear that this problem may cause morale problems. We do not believe it will be a severe one, as long as every executive is perceived to have a fair shot at earning a bonus. As for funding, the amount required, even in agencies that reach the limit is very small compared to total budgets.

SPECIAL RANK AWARDS

Question: When will meritorious and distinguished service ranks be awarded?

Answer: It is anticipated that Meritorious and Distinguished Ranks will be awarded by the President by the end of June this year. It is our intention to recommend these awards to the President in the early summer each year.

Question: Is there a push to award these ranks prior to October 1980?

Answer: The schedule followed this year does not represent a special "push," but simply the normal processing schedule. Ranks are limited in number by fiscal year, and therefore, we intend to award them prior to the end of the fiscal year, every year.

Question: Are these ranks actually based upon performance appraisal?

Answer: The ranks are performance based. However, since they are typically justified by extensive career accomplishments covering many years they need not be linked solely to current year performance in the same way annual bonuses are.

Question: Has enough time elapsed to adequately determine who the most deserving individuals are?

Answer: Yes. For bonuses, as opposed to ranks, we recommend at least four months as a minimum performance period. However, most agencies are going to use a year of performance as the basis for determining these awards.

The point in respect to ranks, is that the award is given for a career of outstanding performance, not just for the most current period. Those who will receive ranks will have had a record of such outstanding contribution that there is no real possibility that their current year performance will be found wanting.

Question: How will the incentive awards system be differentiated from SES bonuses and service ranks?

DISTINCTIONS BETWEEN INCENTIVE AWARDS AND OTHER RECOGNITION

Answer: The incentive awards system has existed independently of other compensation and awards systems. It will primarily be used in SES for special achievements, and for individuals whose outstanding contributions cannot be recognized by bonuses or ranks.

Question: Will incentive awards be used to supplement SES bonuses and/or merit pay?

Answer: It is unlikely that an individual would receive an incentive award on top of a bonus award in SES. On the other hand, these awards can be given to individuals who are not eligible for bonuses and for performance which is not covered by such bonuses such as special, unanticipated achievements, suggestions, patents, etc.

For merit pay employees, the incentive awards provisions have been incorporated as the cash payment portion of the merit pay program.

OVERSIGHT OF SES AWARDS SYSTEMS

Question: What monitoring systems will be used to ensure agencies' awards systems are being properly implemented?

Answer: The Executive Personnel and Management Development Group's evaluation program has several monitoring systems to oversee agencies' implementation of their SES awards systems. We visit approximately 10 agencies per quarter to review intensively their executive personnel programs and provide assistance as needed. As part of a review, which lasts as long as one week, we look closely at the agency's executive performance appraisal and awards program through records review and interviews with executives and personnel office staff. In addition to the full evaluation-assistance visits, we conduct briefer reviews, approximately a half-day in length, which focus on performance appraisal and awards. In both of these types of reviews, we look at both the performance appraisal system and the process by which it is carried out, including awards.

A third component of our evaluation program is SES case studies. These are long-term studies of the SES program in four agencies. We will study in depth each agency each agency annually over a four-year period. A major part of the case study in each agency is accountability of executives, which includes performance appraisal and awards. We will track the progress of the four agencies by conducting executive and personnel staff interviews and reviewing records--similar in method to the evaluation-assistance visits, but in much greater depth. In the case studies, we also administer the Federal Employee Attitude Survey to SES members; this covers the performance appraisal reward system in considerable detail.

A fourth system which will be used, in part, to monitor agencies' awards systems is the automated Executive Personnel and Management Development Information System. Reports pertaining to awards which will be produced semi-annually are the following:

a. Performance appraisal summary ratings by performance award percent bands.

b. Performance appraisal summary ratings by receipt of performance awards and SES ranks including nominations.

c. SES ranks including nominations by sex, minority group, and location.
d. Incentive awards by pay plan, sex, minority group, location, and SES performance awards and ranks.

These reports will be used by the Executive Personnel and Management Development Group to determine which agencies need closer review or appear to be in need of assistance.

MERIT SYSTEMS PROTECTION BOARD

STATEMENTS OF:

RUTH T. PROKOP, CHAIRWOMAN, MERIT SYSTEMS PROTECTION BOARD
MARY EASTWOOD, ACTING SPECIAL COUNSEL

ACCOMPANIED BY:

ERSA POSTON, VICE CHAIR
FRED HOLLINGSWORTH, DIRECTOR OF ADMINISTRATIVE PROGRAMS

BUDGET REQUEST

Senator DECONCINI. Next, the committee will receive testimony from the Merit Systems Protection Board and the Office of Special Counsel; $15,512,000 and 407 permanent positions have been requested for fiscal year 1981 and $1 million has been requested for the fiscal year 1980 supplemental for the Board; $5,270,000 and 162 permanent positions have been requested for fiscal year 1981 for the Office of Special Counsel.

The committee is pleased to have Ruth Prokop, Chairwoman of the Merit Systems Protection Board, and Mary Eastwood, the Acting Special Counsel, with us today. Your full statements will be printed in the record. Please introduce your colleagues for the record and proceed to highlight your testimony.

[The statements follow:]

Statement of Ruth T. Prokop

I am pleased to present to you this morning the Merit Systems Protection Board's requests for additional funding for the remainder of Fiscal Year 1980 as well as our Fiscal Year 1981 appropriation. Since my last appearance before this Subcommittee was only a few short months into the Board's first year of existence, I will begin by quickly reviewing for you our principal achievements during that crucial year.

As you know, the Merit Systems Protection Board was established on January 1, 1979, by the President's Reorganization Plan No. 2 of 1978, and was continued by the Civil Service Reform Act of 1978. The former Civil Service Commission was abolished, and its functions were divided between the newly-created Board and the Office of Personnel Management. Adjudicatory, appellate, and certain merit systems oversight functions were assigned to the Board, while personnel management responsibilities were vested in the Office of Personnel Management.

You will recall that when the Board began operations on January 11, 1979, a number of problems inherited from the former Civil Service Commission presented an immediate impediment to our undertaking new statutory responsibilities. These problems included:

- fragmented, inefficient organizational components;
- a non-functioning case processing system; and
- a rapidly growing inventory of nearly 5,000 pending cases.

From administrative and managerial standpoints, these problems were staggering. Yet our inadequate initial funding rendered us unable even to clear away these old problems, let alone to effectively undertake our new responsibilities.

Nonetheless, we resigned ourselves to the task of overhauling the antiquated case processing system which we inherited. Although we had not yet received the necessary funding, we put into place the Office of the Secretary to systematically docket and monitor all employee appeals and other Board cases and correspondence throughout their processing. We gradually succeeded in freeing ourselves from a quagmire of senseless procedures marked by inordinate delays, unanswered inquiries and a spiraling inventory of pending cases.

It is only in contrast to these bleak conditions that one can fully appreciate the Board's achievements over the year since I last appeared before this Subcommittee. We have managed to reduce the enormous backlog of inherited cases by 85% and nearly 98% of all Reform Act cases have been decided within our self-imposed deadline of 120 days.

Undoubtedly, much of the credit for this remarkable record can be taken by this Subcommittee and the Congress, for it was only made possible by your determined commitment to the Board and your ultimate approval of our 1979 supplemental and revised 1980 budget requests. We are extremely appreciative of your help. Specifically, your support enabled us to invest considerable efforts during 1979 toward the development of a sophisticated computerized case-tracking system which is scheduled to be fully in place by the end of this year. More importantly, it allowed us to assemble a talented staff capable of ensuring the creation of an effective, new organization, ultimately comprised of eight office directors accountable to a Managing Director and myself, as chief executive officer of the Board.

However, even with the support and understanding which you provided last year, I must report that our Fiscal 1980 funding is still inadequate in one very specific area. The Civil Service Reform Act mandates that all aggrieved Federal employees have a right to a "hearing at which a transcript shall be kept." Unlike the old appeals process which afforded employees the right to a hearing only for adverse action appeals, the Reform Act offers employees the right to a hearing in every type of appeal. Prior to the passage of the Reform Act, approximately 20% of the case load required hearings. Currently, 50% of our case load requires transcribed hearings, and in Fiscal 1981, this percentage is anticipated to climb to 65% in direct proportion to the increase of new system cases.

Since we had virtually no experience with cases under the new Act, the cost of this increased volume of transcription was one which we were unable to forecast accurately when we appeared before this Subcommittee last year. We have since learned that in our efforts to be as frugal as possible, we vastly underestimated those costs. Therefore, the Board requires an additional $1,000,000 in budget authority for Fiscal 1980 to cover the additional transcription costs. This estimate is a realistic projection based on nearly a year's experience under the Reform Act. While the cost of transcription of hearings is high, the requirement of the statute leaves us no choice but to bear them.

You will note, Mr. Chairman, that we are not requesting a supplemental for increased pay costs for Fiscal 1980. When our budget requests were prepared, we were aware that we would need, and could easily justify, a pay supplemental in addition to a program supplemental. However, knowing it is the goal of both the President and the Congress to balance the Federal budget, we attempted to do our part in the belt-tightening process by striving to absorb the pay cost increase, and decided to concentrate on securing funds to cover the transcription costs. While the increased pay costs are substantial--$610,000--we are doing our best to absorb them within our existing appropriation. However, the difficulty of absorbing these increased pay costs within a relatively small budget base, makes it all the more important that we receive the relief requested for increased transcription costs. We are simply unable to meet both requirements without additional funding.

I am pleased to say that the Office of Management and Budget recognized the validity of our request for additional funding to cover transcription costs. In the President's original budget the full $1 million was recommended, although the revised budget has cut this back to $860,000. I can only urge the Subcommittee to consider that the law obligates the Board to transcribe hearings whether or not sufficient funding has been allocated to pay for them. Our costs will still be $1 million, and our ability to absorb the difference is necessarily limited in an agency of our small size.

Turning now to our Fiscal 1981 budget request, I wish to emphasize that we have approached its preparation in the same spirit of fiscal restraint as our supplemental request, but have not experienced the same measure of support from OMB.

As you know, to help ensure the Board's independence from the Executive branch, the Congress provided under the Civil Service Reform Act that the Merit Systems Protection Board submit its budget recommendations concurrently to the Congress and the President (5 U.S.C.1205(j)). Nonetheless, rather than viewing this as an opportunity to set unreasonable spending levels, I have always believed it is helpful if we are in agreement with OMB's recommendations whenever possible. As I have just pointed out, this was the case with our supplemental request and OMB's original figures.

However, for Fiscal 1981, it is impossible for the Board to agree with OMB's recommendation as to our requirements. We sincerely feel that the amounts proposed by OMB in the President's budget fail to reflect the minimum resource needs necessary to permit the Board to continue its current frugal operations.

Our 1981 request totals $15,512,000 and 407 positions. And, though the figure represents a difference of $2,677,000 and 25 positions over the OMB's revised recommendation of $12,835,000 (a reduction of $240,000 from the President's original budget request), the discrepancy lies primarily in the areas of mandatory, limited control costs. Those differences specifically represent:

- Annualization of Fiscal 1980 pay and benefits, which represents the cost for individuals who were on our payroll for a part of Fiscal 1980 but will require pay for all of Fiscal 1981;
- Cost of Fiscal 1981 personnel actions, which includes promotions, within grades, and replacement hires. Computations were made assuming that these actions would occur throughout the year;
- Payment to GSA for space and related charges (S.L.U.C.). GSA-calculated rental rates for headquarters space increased by nearly 60% over Fiscal 1980;
- Transcription costs, which, as I have explained, will increase in Fiscal 1981 even beyond the revised 1980 costs; and
- Staffing the Office of Merit Systems Review and Studies--the hiring of 25 persons to serve a statutory reporting function to Congress and the President with respect to prohibited personnel practices.

While the need for fiscal restraint is unquestioned, it is virtually mpossible to determine where any cuts can be made in our small, new agency. n fact, our projected expenses will be even greater than our estimates if udget cuts in other Federal agencies translate into a greater number of ppeals resulting from increased adverse actions. The increases we seek will o no more than enable the Board to continue operations at their lean 1980 evels. Yet denial of these necessary increases could seriously cripple the oard's ability to accomplish even its minimum statutory objectives and esponsibilities. There is simply no program of the Board in which we can fford to operate below current levels.

It is imperative that we focus upon the difference between the OMB recommendations and the Board's own best estimate of its resource needs so that it is clear that those differences are largely attributable to increasing costs over which the Board has limited control. However, it is also important to understand how the total budget request is allocated among the Board's basic functions, and I will attempt to summarize those programs for the record.

The cornerstone of the protections the Board must provide lies within our field operations program where the majority of our cases are decided. We are requesting $7,941,000 and 194 positions for this vital operation. This request represents an increase of $2,150,000 and no positions over Fiscal 1980 funding. Of this increase, $651,000 is required to maintain our Fiscal 1980 level of operations. The remaining $1,499,000 will be used for precisely the same reasons as our 1980 supplemental request--that is, to provide additional funding of transcription services that are required by Section 7701 of Title 5, and that are far greater than had originally been contemplated.

Second is the Board's Office of Appeals which was chiefly responsible for the dramatic reduction in our backlog of old cases. Its present duties include the review and analysis of appeals from field office decisions, drafting the necessary memoranda or opinions and recommending decisions on those appeals to the Board. For this office we are seeking $1,445,000 and 51 positions. The $135,000 increase requested for this program simply reflects continuation of Fiscal 1980 activities at Fiscal 1981 costs, and will help prevent recurrence of the backlog which can so debilitate the integrity of the appeals process.

Third is the Board's Office of General Counsel which provides legal advice to all Board offices, supervises all Board litigation, processes FOIA and Privacy Act appeals, and prepares legal memoranda. Additionally, it serves as liaison with the Congress on all matters concerning budget and legislation and, to date, has responded to more than 1,300 congressional inquiries. We are requesting $965,000 and 35 positions. The $184,000 increase represents the additional funding required for that office to function at the Fiscal 1980 level.

Next is our case decision program review function for which we are requesting $4,721,000 and 87 positions. The $575,000 increase in this area is needed for the continuation of Fiscal 1980 activities in Fiscal 1981. The activities in this program area provide all headquarters and field office administrative services, establish policy direction, and bear final responsibility for all Board activities.

The final program to consider is our Office of Merit Systems Review and Studies. This program deserves your particular attention, because it is the single activity of the Board for which we are requesting real program increases for Fiscal 1981. The requested increase is necessary if we are to fulfill our full complement of statutory responsibilities. Unlike the responsive role of our adjudicatory functions, our merit studies mandate requires us to initiate efforts to identify problem areas in the various Federal merit systems, and to report those studies to Congress and the President. To date, this office has operated at a skeletal level. Despite its low initial funding, it has, at the request of the Chairman of the House Post Office and Civil Service Committee, undertaken a study of sexual harassment in the Federal workplace. However, because of lack of sufficient staff, the balance of its work has been necessarily limited to planning for its full range of activities rather than initiating other studies. That planning effort is now complete, and we are ready to begin a number of other studies. These studies will cover a broad range of personnel related topics, and may include, for example, a study of the effects of the new Senior Executive Service and merit pay plans generated by the Reform Act.

We require 25 new positions and $313,000 to support them in addition to our $80,000 increase for "steady state" operations. With these increased positions, the merit studies program will have a staff of 40. We believe that even that number is lean, considering the magnitude of their task.

To summarize the difference between our Fiscal 1980 appropriation and our Fiscal 1981 request, Mr. Chairman, it is twofold in purpose:

1) To fund mandatory costs which have increased beyond Fiscal 1980 levels in the amount of $3.1 million; and
2) To secure sufficient funding for our statutorily required affirmative efforts to identify problems in the Federal merit systems in the amount of approximately $313,000.

In closing, I wish to reiterate my steadfast refusal to play the "pad the budget game" with either our Fiscal 1980 supplemental request or our 1981 appropriation. I believe that an examination of our requests by any reasonable measure would confirm that both are void of any surplusage and include only essential increases. We are confident that with your support we can further build upon the successful record we have established thus far. We therefore urge you to help ensure the continuation of our progress by your approval of these requests.

That concludes my statement, Mr. Chairman. I will be pleased to respond to any questions the Subcommittee may have.

STATEMENT OF MARY EASTWOOD

I AM PLEASED TO APPEAR BEFORE YOU TODAY TO REVIEW WITH YOU OUR REQUEST FOR FISCAL YEAR 1981.

AS YOU ARE AWARE, THE OFFICE OF THE SPECIAL COUNSEL WAS ESTABLISHED IN JANUARY 1979 UNDER THE PRESIDENT'S REORGANIZATION PLAN NO. 2 OF 1978. THE FUNCTIONS AND RESPONSIBILITIES OF THE OFFICE, AS SUBSTANTIALLY EXPANDED BY THE CIVIL SERVICE REFORM ACT OF 1978, ARE TWOFOLD. ONE RESPONSIBILITY IS TO RECEIVE AND INVESTIGATE ALLEGATIONS OF ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION, PRIMARILY THE PROHIBITED PERSONNEL PRACTICES ESTABLISHED UNDER THE REFORM ACT, AND TO INITIATE APPROPRIATE CORRECTIVE AND DISCIPLINARY ACTIONS WHEN FOUND WARRANTED. THE OTHER RESPONSIBILITY IS TO PROVIDE FEDERAL EMPLOYEES A SAFE CHANNEL FOR DISCLOSING INFORMATION EVIDENCING GOVERNMENT WRONGDOING WITH ASSURANCE THEIR IDENTITIES ARE NOT DISCLOSED WITHOUT THEIR CONSENT AND WITHOUT FEAR OF RETALIATION. THIS IS COMMONLY REFERRED TO AS "WHISTLEBLOWING". WHILE WE ARE NOT AUTHORIZED TO INVESTIGATE THE SUBSTANCE OF THESE TYPES OF ALLEGATIONS, WE ARE REQUIRED TO TRANSMIT THE INFORMATION RECEIVED TO THE HEAD OF THE AGENCY CONCERNED FOR APPROPRIATE ACTION AND A REPORT OF THE ACTION TAKEN OR TO BE TAKEN IN THE MATTER. FURTHER, WHEN WE FIND THAT THERE IS SUBSTANTIAL LIKELIHOOD THAT THE ALLEGATION IS CORRECT, WE MAY DIRECT THE HEAD OF THE AGENCY TO INVESTIGATE THE MATTER AND, WITHIN 60 DAYS, REPORT TO THE CONGRESS AND THE PRESIDENT THE RESULTS OF THE INVESTIGATION AND THE ACTION TAKEN THEREON.

WHILE THE STAFF AND BUDGET RESOURCES PROVIDED THE OFFICE INITIALLY WERE TOTALLY INADEQUATE FOR CARRYING OUT THE STATUTORY RESPONSIBILITIES OF THE OFFICE, THE FY 1979 SUPPLEMENTAL APPROPRIATION AND THE FY 1980 APPROPRIATION HAVE PROVIDED SUFFICIENT RESOURCES FOR ESTABLISHING THE BASIC ORGANIZATIONAL framework necessary to be able to begin carrying out our statutory responsibilities with a minimally acceptable level of effectiveness. Having started with an initial staff of 14 employees, all in Washington, D.C., we are completing the establishment of five field offices and five branch offices */ at principal locations nationwide with a total of 140 employees. Staffing the headquarters office in Washington, D.C. is essentially completed with the exception of three executive positions, staffing of which has been deferred pending Senate confirmation of the nomination of the Special Counsel Designee, Mr. Thomas H. Henderson, Jr., and a few support staff.

The Dallas, San Francisco, Atlanta, and Philadelphia Field Offices have been established while our Los Angeles and Seattle Branch Offices are now beginning operations.

Because the General Services Administration was unable to provide us adequate office space at all of our field locations as we had planned, the establishment of our basic field structure has been thrown off-schedule by three to six months. While we now have office space committed to us in Chicago, this Field Office will not be ready for occupancy, because of the renovation necessary, before sometime in July of this year. We had to give up on space for a field office in New York City and we placed that field office in Philadelphia. We do expect to have two other branch offices including Boston and St. Louis established within the next two to three months. Our requests for office space in Denver have not resulted in any positive responses by GSA. Our staff is reviewing approximately 3,000 applications from candidates to fill the remaining 52 vacancies for field positions. In any event, we plan to be fully staffed to our current ceiling of 140 positions by this summer, even if we have to place some employees at temporary locations until permanent office space becomes available.

In the meanwhile, even as our planning and organizational activities have progressed, we have been carrying out our statutory functions and responsibilities to the fullest extent possible with the limited number of staff available. During calender year 1979, we received over 2000 complaints or

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*/ The establishment of one branch office (3 employees) has been postponed in an attempt to comply with the spirit of the President's policy to reduce levels of Federal employment.

ALLEGATIONS. ACTION WAS COMPLETED IN 65% OF THE CASES BY THE END OF THE YEAR. FULL ON-SITE INVESTIGATIONS WERE CONDUCTED IN 81 CASES, WHILE IN A SUBSTANTIALLY GREATER PROPORTION OF THE CASES, FOLLOW-UP WAS PERFORMED THROUGH WRITTEN AND TELEPHONIC INQUIRIES. MANY CASES WERE ALSO "SCREENED OUT" AFTER AN INITIAL REVIEW OF THE INFORMATION SUBMITTED BY THE COMPLAINANT BECAUSE THERE WAS INSUFFICIENT INDICATION OF ANY PROHIBITED ACTIVITY WITHIN THE INVESTIGATIVE JURISDICTION OF THE OFFICE. ADDITIONALLY, 96 OF THE COMMUNICATIONS RECEIVED DISCLOSED INFORMATION EVIDENCING A VIOLATION OF LAW, RULE, OR REGULATION, OR MISMANAGEMENT, GROSS WASTE OF FUNDS, AN ABUSE OF AUTHORITY, OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY, WHICH INFORMATION WAS REFERRED TO THE HEAD OF THE AGENCY INVOLVED FOR NECESSARY ACTION PURSUANT TO SECTION 1206(B) OF TITLE 5, UNITED STATES CODE. FURTHER, IN 20 OF THESE CASES, THE AGENCY HEAD WAS DIRECTED TO CONDUCT AN INVESTIGATION AND TO REPORT TO THE CONGRESS AND THE PRESIDENT, AS WELL AS TO THE OFFICE OF THE SPECIAL COUNSEL, UNDER THE PROVISIONS OF SECTION 1206(B)(3) OF THE STATUTE. BECAUSE OF THE DELAY IN COMPLETING THE ESTABLISHMENT OF OUR FIELD STRUCTURE AND THE STAFFING OF ALL POSITIONS PLANNED FOR FY 1980, OUR FY 1980 APPROPRIATION WILL NOT BE FULLY EXPENDED. HOWEVER, WE WILL BE FULLY STAFFED AND OPERATIONAL BY THE END OF THIS FISCAL YEAR.

THE 'BUDGET FOR FY 1980 PROVIDES SUFFICIENT RESOURCES TO CARRY OUT THE MINIMUM ESSENTIAL FUNCTIONS OF THE OFFICE. THAT IS, THE 1980 BUDGET WOULD, ONCE THE OFFICE IS FULLY STAFFED, ENABLE THE OFFICE TO TAKE SOME ACTION ON ALL ALLEGATIONS RECEIVED. THIS ACTION WOULD INCLUDE SCREENING OUT A SUBSTANTIAL NUMBER OF BORDER LINE CASES WHICH WOULD OTHERWISE WARRANT SOME GREATER DEGREE OF FOLLOW-UP INQUIRY TO ASSURE THAT THE PUBLIC INTEREST IS ADEQUATELY PROTECTED. OUR REQUEST FOR FY 1981, THEREFORE, PROVIDES FOR AN ADDITIONAL 22 POSITIONS OVER OUR FY 1980 CEILING WHICH WE BELIEVE WILL BE NEEDED TO CARRY OUT OUR STATUTORY RESPONSIBILITIES MORE FULLY AND ADEQUATELY, AS FOLLOWS:

o $321,000 AND 10 POSITIONS TO CONDUCT AT LEAST FOUR INVESTIGATIONS DURING THE YEAR INTO MATTERS OR AREAS WHICH WE FIND WARRANT INVESTIGATION IN THE ABSENCE OF ANY SPECIFIC COMPLAINT OR ALLEGATION, AS CONTEMPLATED BY SECTIONS 1206(A)(3) AND (H) OF TITLE 5, UNITED STATES CODE. SUCH INVESTIGATIONS WOULD BE BASED ON TRENDS AND OTHER INDICATIONS OF PATTERNS OF PROHIBITED ACTIVITIES GOVERNMENT-WIDE OR IN PARTICULAR AGENCIES, AND MAY BE

PREEMPTIVE IN NATURE TO HEAD OFF THE OCCURRENCE OF PROHIBITED ACTIVITIES.

- $433,000 AND 12 POSITIONS FOR ESTABLISHING AND MAINTAINING A "HOT LINE" OR SIMILAR SYSTEM FOR RECEIVING COMPLAINTS AND INFORMATION TELEPHONICALLY AND THE STAFF NEEDED TO ACT EXPEDITIOUSLY ON COMPLAINTS RECEIVED UNDER SUCH SYSTEM. THE STAFF WOULD ALSO ENABLE THE OFFICE TO MAINTAIN A MORE EFFECTIVE INFORMATION AND OUTREACH PROGRAM, THE ABSENCE OF WHICH HERETOFORE HAS BEEN SEVERELY CRITICIZED BY THE GENERAL ACCOUNTING OFFICE. A SUMMARY OF THE GAO REPORT AND ACTIONS WE HAVE TAKEN IS ATTACHED FOR YOUR INFORMATION.

IN SUMMARY, OUR REQUEST FOR FY 1981 PROVIDES ESSENTIALLY FOR CONTINUING THE BASIC PROGRAM ACTIVITIES INITIATED UNDER THE FY 1980 BUDGET AND AN INCREASE OVER THAT BUDGET OF $754,000 AND 22 POSITIONS NEEDED TO BE ABLE TO CARRY OUT OUR STATUTORY RESPONSIBILITIES IN FULLER COMPLIANCE WITH THE LAW AND AS CONTEMPLATED BY THE CONGRESS WHEN IT PASSED THE CIVIL SERVICE REFORM ACT OF 1978.

MR. CHAIRMAN, THIS CONCLUDES MY FORMAL STATEMENT, I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE AT THIS TIME.

GAO REPORT FPCD-80-15 CONCERNING MERIT SYSTEMS AND FEDERAL EMPLOYEE PROTECTION

The purpose of this report is to submit a statement on actions taken by the Office of the Special Counsel as a result of recommendations made to the Special Counsel by the General Accounting Office, as required by 31 U.S.C. 1176.

By letter dated October 22, 1979 the General Accounting Office made three recommendations to the Special Counsel. First, GAO recommended that the Special Counsel take immediate action to inform all Federal employees in nonlegalistic or nontechnical terms of the function and role of the Office, including a summary of the Special Counsel's responsibilities, the protection afforded Federal employees, the types of prohibited personnel practice allegations under the Special Counsel's investigative jurisdiction, and information needed from the complainant in order to evaluate the allegation. The Office of the Special Counsel regulations on prohibited personnel practices and activities and procedures for the receipt and investigation of allegations were published in the Federal Register on December 21, 1979 (44 FR 75914). These regulations included the information outlined by GAO and an effort was made to draft the regulations in "plain English" without sacrificing technical accuracy. In addition, an employee handbook on the functions of the Special Counsel with guidance concerning the submission of complaints and allegations has been drafted and is currently under review in this Office. We anticipate publishing it this quarter and giving it wide distribution.

Second, GAO recommended that the Special Counsel give guidance to Federal agency hotline officials on criteria for the types of personnel allegations to refer to the Special Counsel, suggestions on what questions to ask and facts to obtain from the employee, and the method for referring such allegations to the Office of the Special Counsel. A package of information materials with guidance on the functions of the Office of the Special Counsel was sent to agency hotline officials on July 25, 1979. Additional information and guidance will be provided from time to time. Our staff attorneys and investigators serve, on a rotating basis, as "Officer of the Week" to receive telephoned complaints and walk-ins, including those referred to the Special Counsel by agency hotline officials. Agency hotline officials may refer allegations to this Office in any form and we have imposed no limitations on the method of such referrals. Lastly, our fiscal year 1981 budget submission includes the request for 10 additional positions to establish our own Information/Outreach Hotline System.

Third, GAO recommended that the Office of the Special Counsel develop, and coordinate with the Merit Systems Protection Board, an information and case tracking system that would permit control of the cases received and provide data on the types of prohibited personnel practice cases by agency and by type. The Office of the Special Counsel computer system is scheduled for delivery during February 1980. It will be used to keep track of the status of complaints and to develop reports on the number and type of complaints received. A complaint reporting system has been developed for use in the computer, and this system was put into effect on January 14, 1980. Statistical data on the types of complaints, by agency and location, will be made available to the Board. We anticipate cooperating particularly with the Board's Merit Systems Review and Studies Office in utilizing this data.

Date: Feb 15, 1980

Mary Eastwood
Mary Eastwood
Acting Special Counsel

Ms. PROKOP. Thank you very much. I am accompanied by Ersa Poston, Vice Chair of the Board.

Ms. EASTWOOD. I am accompanied by Fred Hollingsworth, Director of Administrative Programs.

Senator DECONCINI. Thank you. Please proceed.

Ms. PROKOP. I am very pleased to be here to present to you this morning the Merit Systems Protection Board's requests for additional funding for the remainder of fiscal year 1980 as well as our fiscal year 1981 appropriation. Since my last appearance before this subcommittee was only a few short months into the Board's first year of existence, I will begin by quickly reviewing for you our principal achievements during that crucial year.

REVIEW OF INITIAL YEAR'S PROGRESS

As you will recall, the Board inherited many of the accumulated problems of the predecessor agency, the Civil Service Commission. Briefly, these problems included a fragmented, inefficient organizational component; a nonfunctioning case processing system; and a rapidly growing inventory of nearly 5,000 pending cases that eventually mounted to 8,000 cases.

We first resigned ourselves to overhauling the antiquated case processing system by putting into place the Office of the Secretary to systematically docket and monitor all employee appeals and cases, gradually freeing ourselves from the quagmire of senseless procedures marked by inordinate delays, unanswered inquiries, and a spiraling inventory of cases.

It is only in contrast to these bleak conditions that one can fully appreciate the Board's achievements over the year since I last appeared before this subcommittee. We have managed to reduce the enormous backlog of inherited cases by 85 percent, and nearly 98 percent of all Reform Act cases have been decided within our self-imposed deadline of 120 days. This is a record for which I am extremely proud.

I owe a considerable debt to this subcommittee and to the Congress as a whole, for it was your determined commitment and your ultimate approval of our 1979 supplemental and revised 1980 budget request that made the above progress possible.

FISCAL YEAR 1980 SUPPLEMENTAL NECESSARY FOR STATUTORY TRANSCRIPTION SERVICES

However, even with the support and understanding which you provided last year, I must report that our fiscal year 1980 funding is still inadequate in one very specific area. The Civil Service Reform Act mandates that all aggrieved Federal employees have a right to a hearing at which a transcript shall be kept. Unlike the old appeals process which afforded employees the right to a hearing only for adverse action appeals, the Reform Act offers employees the right to a hearing in every type of appeal. Prior to the passage of the Reform Act, approximately 20 percent of the caseload required hearings. Currently, 50 percent of our caseload requires transcribed hearings, and in fiscal 1981 this percentage is anticipated to climb to 65 percent in direct proportion to the increase of new system cases.

Since we had virtually no experience with cases under the new act when I appeared before you last year, I erred on the conservative side and underestimated transcription costs in our 1980 budget request. The Board now needs an additional $1 million in budget authority for fiscal year 1980 to pay solely for transcription costs. While the cost of the transcription of hearings is high, the requirement of the statute leaves us no choice but to bear those costs.

I would note at this point we are not requesting a supplemental for increased pay costs for fiscal 1980, though it is clearly an expense the Board must also bear. When our budget requests were prepared, we were aware that we would need, and could easily justify, a pay supplemental in addition to a program supplemental. However, knowing it is the goal of both the President and the Congress to balance the Federal budget, we attempted to do our part in the belt-tightening process by striving to absorb the pay cost increase, and decided to concentrate on securing funds to cover the transcription costs. However, the difficulty of absorbing these increased pay costs within a relatively small budget base makes it all the more important that we receive the relief requested for increased transcription costs. We are simply unable to meet both requirements without additional funding.

OMB recognized the validity of our request for additional funding to cover transcription costs. In the President's original budget the full $1 million was recommended, although the revised budget has cut this back to $860,000, a figure approved last week by our House Appropriations Subcommittee. I can only remind this subcommittee the Board is obligated by statute to incur these transcription costs regardless of the availability of funds to pay for them.

FISCAL YEAR 1981 BUDGET REQUEST

Our fiscal year 1981 budget request was prepared in the same spirit of fiscal restraint as our supplemental request, but has not enjoyed the same measure of support from the OMB.

As you know, to help insure the Board's independence from the executive branch, the Congress provided under the Civil Service Reform Act that the Merit Systems Protection Board submit its budget recommendations concurrently to the Congress and the President. Nonetheless, rather than viewing this as an opportunity to set unreasonable spending levels, I have always believed it is helpful if we are in agreement with OMB's recommendations whenever possible. As I have just pointed out, this was the case with our supplemental request and OMB's original figures.

However, for fiscal 1981, it is impossible for the Board to agree with OMB's recommendation as to our requirements. The amounts proposed by OMB in the President's budget fail to reflect the minimum resource needs necessary to permit the Board to continue its current frugal operations.

Let me briefly summarize the 1981 request. Our 1981 request totals $15,512,000 and 407 positions. Though the figure represents a difference of $2,677,000 and 25 positions over the OMB's revised recommendation of $12,835,000, a reduction of $240,000 from the President's original budget request, the discrepancy lies primarily in the areas of mandatory, limited control costs. The differences specifically represent: annualization of fiscal 1980 pay and benefits, which represents the cost for individuals who were on our payroll for a part of fiscal 1980 but will require pay for all of fiscal 1981; second, the cost of fiscal 1981 personnel actions, which includes promotions, within grades and replacement hires; payment to GSA for space and related charges, which have increased by nearly 60 percent over fiscal 1980; transcription costs; and finally, staffing the Office of Merit Systems Review and Studies—the hiring of 25 persons to serve a statutory reporting function to Congress and the President with respect to prohibited personnel practices.

While the need for fiscal restraint is unquestioned, it is virtually impossible to determine where any cuts can be made in the Board's resources and still enable us to continue operations at the lean 1980 level.

Now that I have summarized the differences between the OMB recommendation and the Board's needs, permit me, if you will, to briefly describe our total budget request as allocated among the Board's basic functions.

BREAKDOWN OF 1981 BUDGET REQUEST

The cornerstone of the protections the Board must provide lies within our field operations program where the majority of our cases are decided. We are requesting $7,941,000 and 194 positions for this vital operation. This request represents an increase of $2,150,000 and no positions over fiscal 1980 funding. Of this increase, $651,000 is required to maintain our fiscal 1980 level of operations. The remaining amount is needed to pay for transcription costs.

For the Board's Office of Appeals we are seeking $1,445,000 and 51 positions. The $135,000 increase requested for this program simply reflects continuation of fiscal 1980 activities at fiscal 1981 costs.

Third is the Board's Office of General Counsel for which we are requesting $965,000 and 35 positions. The $184,000 increase represents the additional funding required for that office to function at the fiscal 1980 level.

Additionally, in our case decision program review function we are requesting $4,721,000 and 87 positions. The $575,000 increase in this area is needed for the continuation of fiscal 1980 activities in fiscal 1981.

Finally, I wish to direct your attention to our Office of Merit Systems Review and Studies, the single activity of the Board for which we are requesting real program increases for fiscal year 1981.

Unlike the responsive role of our adjudicatory functions, our merit studies mandate requires us to initiate efforts to identify problem areas in the various Federal merit systems, and to report those studies to Congress and the President. Despite its low initial funding, the Office, at the request of the chairman of the House Post Office and Civil Service Committee, has undertaken a study of sexual harassment in the Federal workplace. However, because of lack of sufficient staff, the balance of its work has been necessarily limited to planning for its full range of activities rather than initiating other studies. That planning effort is now complete, and we are ready to begin a number of other studies if the funding is made available to us. For this particular responsibility we will need 25 new positions and $313,000 in addition to the $80,000 increase for "steady state" operations.

SUMMARY

Thus, to summarize the differences between our fiscal year 1980 appropriations level and fiscal year 1981 request, Mr. Chairman, it is twofold in purpose: first, to meet costs over which we have no control but which have increased $3.1 million beyond our fiscal year 1980 level. Second, to secure sufficient funding for our statutorily required affirmative efforts to identify problems in the Federal merit systems in the amount of approximately $313,000.

In closing, I wish to reiterate my strong belief that an examination of our fiscal 1980 supplemental and our 1981 appropriation request by any reasonable measure would confirm that both include only essential increases, and I invite your careful scrutiny.

I would like to explain, as I close, the reason you have two statements before you, one from the Board and one from the independent Office of Special Counsel. During the consideration of the Civil Service Reform Act, there was a concern that the Special Counsel's budget be made a separate line item within the Board's request. This was to insure that the Special Counsel's independent prosecutorial responsibility could not be tampered with or affected by the Board's consideration of its budgetary process. In an abundance of caution to assure that these prosecutorial and investigative responsibilities are fully insulated from Board control, two separate Board requests for appropriations are submitted to this committee. The Board exercises no control over those requests, and accordingly I would respectfully request any questions you have of the Office of Special Counsel be directed to the Acting Special Counsel.

That completes my summary, and I will be happy to entertain any questions.

Senator DECONCINI. Ms. Eastwood, would you please highlight your statement.

SUMMARY STATEMENT OF MS. EASTWOOD

Ms. EASTWOOD. I am pleased to appear before you today to review with you our request for fiscal year 1981.

As you are aware, the Office of the Special Counsel was established in January 1979 under the President's Reorganization Plan No. 2 of 1978. The functions and responsibilities of the Office, as substantially expanded by the Civil Service Reform Act of 1978, are twofold. One responsibility is to receive and investigate allegations of activities prohibited by civil service law, rule or regulation, primarily the prohibited personnel practices established under the Reform Act, and to initiate appropriate corrective and disciplinary actions when found warranted.

The other responsibility is to provide Federal employees a safe channel for disclosing information evidencing Government wrongdoing with assurance their identities are not disclosed without their consent and without fear or retaliation. This is commonly referred to as "whistleblowing." While we are not authorized to investigate the substance of these types of allegations, we are required to transmit the information received to the head of the agency concerned for appropriate action and a report of the action taken or to be taken in the matter. Further, when we find that there is substantial likelihood that the allegation is correct, we may direct the head of the agency to investigate the matter and, within 60 days, report to the Congress and the President the results of the investigation and the action taken thereon.

While the staff and budget resources provided the Office initially were totally inadequate for carrying out the statutory responsibilities of the Office, the fiscal year 1979 supplemental appropriation and the fiscal year 1980 appropriation have provided sufficient resources for establishing the basic organizational framework necessary to be able to begin carrying out our statutory responsibilities with an acceptable level of effectiveness. Having started with an initial staff of 14 employees, all in Washington, D.C., we are now completing the establishment of five field offices and five branch offices at principal locations nationwide with an anticipated total of 140 employees.

Because we have not fully staffed all positions planned for fiscal 1980, our fiscal year 1980 appropriation will not be fully expended. In fact, after my written statement was furnished to the subcommittee, $1 million, or 22 percent, of our budget for this fiscal year was recommended to Congress for rescission because we are not fully staffed. We were unaware of this proposed rescission until after it was submitted to Congress. For the record, we do not concur with the proposed rescission of $1 million, but instead we would concur in the rescission of $564,000, or 12 percent of our budget, as a result of saving in personnel compensation. In this respect, we would hope that the proposed rescission will not influence our budget request for fiscal year 1981.

Let me briefly outline the work accomplished by the Office during this first year of operations. Despite the extensive time devoted by our limited staff to planning and organizational activities, the Office has been able to effectively discharge its statutory functions and responsibilities toward protection of Federal employees. During calendar year 1979, we received over 2,000 complaints or allegations. Action was completed in 65 percent of the cases by the end of the year. Full on-site investigations were conducted in 81 cases, while in a substantially greater proportion of the cases, followup was done by written and telephonic inquiries.

Additionally, 96 of the communications received disclosed information evidencing a violation of law, rule or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, and were referred to the head of the agency involved for necessary action pursuant to section 1206(b) of title 5, United States Code. Further, in 20 of these cases, the agency head was directed to conduct an investigation and to report to the Congress, the President, and the Special Counsel, under the provisions of section 1206(b)(3) of the statute.

The budget for fiscal year 1980 provides sufficient resources to carry out the minimum essential functions of the Office. That is, the 1980 budget would, once the Office is fully staffed, enable the Office to take some action on all allegations received, and thus assure that the public interest is adequately protected. Our request for fiscal year 1981, therefore, provides for an additional 22 positions over our fiscal year 1980 ceiling which we believe will be needed to carry out our statutory responsibilities more fully and adequately, as follows:

First, $321,000 and 10 positions to conduct at least four full-scale investigations into matters or areas which we find warrant investigation in the absence of any specific complaint or allegation, such as patterns of prohibited activities, either Government- or agency-wide. Second, $433,000 and 12 positions for establishing and maintaining a hotline for receiving complaints over the telephone. The absence of such a system has been severely criticized by the General Accounting Office.

In summary, our request for fiscal year 1981 provides for the continuation of the basic program activities initiated under the fiscal year 1980 budget, with an increase of $754,000 and 22 positions needed to more fully carry out our statutory responsibilities as mandated by the Congress.

Mr. Chairman, this concludes my formal statement. I would be pleased to answer any questions.

OBLIGATIONS TO DATE

Senator DECONCINI. Ms. Eastwood, of your 1980 budget of $4,516,000, how many dollars have you actually allocated and spent?

Ms. EASTWOOD. I will ask Fred Hollingsworth to respond to that.

Mr. HOLLINGSWORTH. As of March 2, we had obligated approximately $850,000.

Senator DECONCINI. What do you project you are going to have expended at the end of the fiscal year?

Mr. HOLLINGSWORTH. We are projecting we will be obligating or spending approximately $3.8 million in this fiscal year.

Senator DECONCINI. And once you reach that amount, I don't quite understand the need for such an increase next year, when you are going to have a substantial surplus. Is that just because you will not have everybody on board?

Mr. HOLLINGSWORTH. Yes, sir. We were fully funded for 140 positions for the entire fiscal year. However, because we received the appropriations effective October 1 and are not fully staffed for the full year, we would have a surplus portion of our budget left over.

Senator DECONCINI. By the end of this fiscal year, will you have 140 people on board?

Mr. HOLLINGSWORTH. Yes, we will.

PRESIDENT'S RECOMMENDATION FOR COUNSEL

Senator DECONCINI. What would the effect be if Congress approved only $4.4 million? What would be the programmatic impact if we approved the President's recommendation for the Office of Special Counsel?

Ms. EASTWOOD. The effect would be that we would not be able to conduct our systemic prohibited personnel practice investigations that we were planning and we would not be able to establish a hotline.

COUNSEL'S HOTLINE PROGRAM

Senator DECONCINI. You have the hotline now?

Ms. EASTWOOD. We have a form of hotline. We have an officer of the week, where one employee, either an investigator or attorney, is assigned for 1 week to take all telephone calls from employees and answer their questions. This results in interrupting their work on the regular cases for a period of 1 week.

Senator DECONCINI. Is there any other way to get this information to Federal employees by asking agency heads or OMB or someone to direct agencies?

Ms. EASTWOOD. Some of the agencies do have their own hotline system. Frequently a Federal employee wants to go to an independent source for help. They don't trust the agency officials.

Senator DeConcini. Are you an advocate for employees?

Ms. Eastwood. We are an advocate for protection of Federal employees' rights, but we do not represent them in the sense of an attorney-client relationship, no.

Senator DeConcini. But you think it necessary to have a hotline rather than writing you a letter?

Ms. Eastwood. Frequently an employee would call in and ask if we think they have a case. If it is clear there is no prohibited personnel practice or violation of civil service law, it is a waste of their time and our time if they write in. I think in the long run it can save the government a lot of time and money.

PRESIDENT'S RECOMMENDATION FOR THE BOARD

Senator DeConcini. Mrs. Prokop, what would be the programmatic consequences if the Congress adopted the administration's $12.8 million recommendation instead of the $15.5 million? What will you cut out?

Ms. Prokop. I think the impact on the Board itself would be rather dramatic. Let me give you some examples.

First, we would not be able to undertake, as I pointed out for you, our merit studies and review program. But that only accounts for approximately $313,000. The major cut, if we were to accept the OMB recommendation, would be a cut in personnel. I would have to cut 80 people, approximately 30 to 40 of those already on board, and another 40 to 50 to be hired.

Senator DeConcini. Would you cut out the special studies first or would you cut the people first?

Ms. Prokop. We would have to cut the special studies first, of course, since we are requesting an increase there.

Senator DeConcini. If you cut out the special studies, then how many people would you have to reduce in addition?

Ms. Prokop. We would still have to reduce another 80. I want to separate those two thoughts very clearly. The first is to stop a new initiative that needs to be funded. The second is the rather dramatic impact on the Board's present operation which would come in a reduction of 80 people.

Let me carry it a little further.

Senator DeConcini. Excuse me, I don't understand why you have to cut 80 people. The administration's recommendation is $12,835,000. You are presently at $12,075,000. What would the roughly $715,000, or something close to that, go for?

Ms. Prokop. I am sorry, I didn't hear your last question.

Senator DeConcini. Even the administration allows almost an $800,000 increase in your present budget. Where would that $800,000 be applied? Wouldn't that be used for some salaries for the 80 people?

Ms. Prokop. That is totally for transcription costs. And I think the problem is understanding that, while I received an approval from OMB of a personnel level of 382 people, the funds are not present to support that number. I simply don't have the dollars necessary to support that figure. So the number may appear to be rather reasonable. But I also have substantial cost increases, including the rent which has increased 59 percent. I did not receive an increase for that. I also am required to pay transcription costs.

Senator DECONCINI. Who would be laid off if you laid off people, 80 or any number? Who would be the first to be laid off? Do you have any contingency plans?

Ms. PROKOP. No, sir, I do not. I have been hopeful that I would not have to face that situation.

I would not want to mislead you. I have approximately 40, 45, maybe even 50 positions that haven't been filled. They would definitely be the first to go. I could not fill those positions.

Senator DECONCINI. That would be part of the 80?

Ms. PROKOP. Absolutely, that would be the first part of the 80.

Senator DECONCINI. You are talking about laying off 30 or 40 people?

Ms. PROKOP. Yes.

Senator DECONCINI. In addition, if you didn't do the special studies, it would be another 25 you wouldn't hire.

Ms. PROKOP. Yes. And I think there is another point to be made. That isn't the total impact. We have some programmatic impacts that would result. We talked solely of the impact on personnel. We have been successful, as I pointed out, in cleaning out over 85 percent of the backlog. It would clearly start to build again without adequate funding. We would have a slowdown in our ability to keep pace with the incoming cases. Also, I don't think we would be able to undertake any further studies of merit systems.

Senator DECONCINI. Why is it you have not hired the 50, lack of funds?

Ms. PROKOP. We were in the process of hiring the 50. We just received our appropriations in the fall, and we had to go through a series of advertisements, and we were deep into the process when the freeze was announced.

Senator DECONCINI. The freeze is what stopped you?

Mr. PROKOP. Yes; we would have had many of those 50 positions filled. Most of them are in our field offices around the country. That to me is very crucial because that is where the hearings take place on a daily basis.

Senator DECONCINI. Thank you. I have no further questions at this time. We will submit some further questions.

Ms. PROKOP. Certainly, we will be delighted to respond.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

MERIT SYSTEMS PROTECTION BOARD

Major Statutory Responsibilities of the Board

MSPB was given four major statutory responsibilities under the Civil Service Reform Act. These authorities are:

1) To hear and adjudicate employee appeals;
2) To enforce their decisions with regard to employee appeals;
3) To conduct special studies; and
4) To exercise oversight over OPM regulations.

Q. - The Board has been criticized for doing very little with regard to special studies and its oversight responsibilities. How much of the 1981 request would be focused on these two areas of responsibility?

A. - The Board is unaware of any criticism by Members of Congress in this regard, and, in fact, has responded to the request of Chairman James M. Hanley of the House Committee on Post Office and Civil Service to conduct a comprehensive study of sexual harassment in the Federal workplace. Additionally, the Board has developed detailed plans for a full range of activities in this area, and will begin to implement them if requested funding is made available. Of the 1981 request, $313,000 and 25 new positions are keyed toward those functions, in addition to $80,000 which is necessary to maintain 1980 levels of operations.

Special Studies

Q. - An additional $313,000 and 25 positions are requested to expand efforts to implement the special studies mandated by the Civil Service Reform Act. Specifically, what does the agency propose to study in Fiscal Year 1981?

Q. - The Board is responsible for conducting studies of Federal merit systems and reporting to the President and the Congress as to whether they are free of prohibited personnel practices. What has the Board done to carry out this responsibility?

Q. - How many staff are assigned to this function?

A. - During Fiscal Year 1981, the Office of Merit Systems Review and Studies will conduct special studies, building on two substantive efforts started in Fiscal Year 1980. These efforts are:

1) The study of sexual harassment in the Federal work force; and
2) Development of small, voluntary, survey panels composed of members of the senior executive service, merit pay eligibles, and others to be defined.

The outcome of both the sexual harassment study and panel surveys will identify critical problems in Federal merit systems and will also serve as indicators of problems in specific Federal departments and agencies. Based in part on these findings, MSRS's work plan in FY 1981 includes --

- Several agency-specific studies which respond to the issues raised by these initial indicators; and
- Several special studies which will be both topical and timely and which will use a two-phased approach:

  a) A survey process to determine whether there is a problem, and its magnitude; and
  b) On-site investigations which seek to further identify and develop solutions for problems surfaced during the survey process.

At present 15 staff are assigned to MSRS. We are requesting funding for an additional 25.

Q. - What is the status of the sexual harassment study that the agency recently initiated?

A. - In response to a request from the House Post Office and Civil Service Subcommittee on Investigations, chaired by Representative James M. Hanley of New York, the Board has been working diligently and steadily on developing the first scientifically constructed survey on this subject ever administered either within the Federal workplace or the private sector. The Board is in the final stages of developing a questionnaire that will be distributed to a randomly selected sample of the Federal work force. Approximately 20,000 Federal employees representing a cross-section of employees, both men and women, across the country are included in this sample. The questionnaire has been pretested on approximately 320 men and women Federal employees of various grade levels and occupations from over 10 Federal agencies. The questionnaire is scheduled to be mailed out by the end of May. The findings from this study will be presented to the House Post Office and Civil Service Subcommittee on Investigations this summer.

The Board estimates the survey results will be available in four to six months. At that time, the Board will issue a report containing a summary of the legal aspects of sexual harassment, a discussion of current remedies for Federal employees and possible improvements and a compilation of important statistics derived from the survey results.

The Board notes that both the Board and the Special Counsel have the statutory authority to address and protect Federal employees from prohibited personnel practices such as sexual harassment. The Board has confidence that this authority will be used to create a supportive climate in which victims of sexual harassment will come forward to invoke the available sanctions.

Q. - The justification material indicated the MSPB would complete a study in 1980 on the appellate pattern that is evolving under Reform Act procedures. Has that study been completed?

Q. - What can the agency tell the Committee regarding the type of appeals that it is receiving?

A. - The Office of Merit Systems Review and Studies has completed a study of the appellate patterns evolving under Reform Act procedures. However, the analysis of the study is not yet in a form for release. The initial study involved the Board's field office decisions between January 11, 1979--the first date CSRA procedures applied to the appeals process--and September 30, 1979, the end of the fiscal year. The type of appeals received during this period may not be typical of overall trends under CSRA appellate procedures. However, we have compiled a breakdown of these cases as listed below:

Type of Appeal	Number
Adverse Actions	1259
Reduction in Force	277
Unsatisfactory Performance	82
Retirement	33
Disability	20
Overpayment	1
Mixed	
Adverse Actions	131
Reduction in Force	33
Other	41
All Other	
ALOC	106
Probation	329
Reemployment Rights/Prior.	4
Restoration to Duty	17
Salary Retention	3
Short Suspension	55
Suitability	18
Performance Rating	10
Employee Practice	10
Senior Executive Service	33
TOTAL	2462

Q. - The Board also is required to review the final regulations of the Office of Personnel Management to assure that the regulations do not cause the commission of a prohibited personnel practice. How do you see the Board's role in this respect and how are these reviews now being performed?

A. - It is our view that the OPM regulation review function is one of the most important functions assigned to the Board by the CSRA, intended to be a countervailing force to the broad powers vested by the same act in the Director, OPM.

Formal review proceedings by the Board itself may be initiated under the CSRA by one of three methods:

1) on the Board's own motion;
2) by its granting of the written petition of an interested person; and
3) by the filing of a complaint by the Special Counsel.

As of this date, the Board has conducted one such review proceeding in the case of Wells v. Harris, initiated by the petition of an employee union. The Board is currently considering other petitions submitted to it as well as taking action to conduct such reviews on its own initiative.

To the latter end, the Board has recently appointed a senior attorney with wide experience in Federal personnel management. He is to direct an active, continuing program systematically to review both existing and future OPM regulations, and to recommend appropriate action to the Board. In this connection, Merit Systems Review and Studies has prepared a thorough legal analysis and program plan upon which the review function will be based.

Office of Special Counsel

These three questions have been answered separately and submitted independently to the Committee by the Office of Special Counsel.

Need for Special Counsel to Encourage Employees to Report Prohibited Practices

These two questions have been answered separately and submitted independently to the Committee by the Office of Special Counsel.

Whistleblower Disclosures

These nine questions have been answered separately and submitted independently to the Committee by the Office of Special Counsel.

Fiscal Year 1980 Supplemental/Transcription Services

Q. - $1,000,000 has been requested to provide transcription services to Federal employees. How much is currently in the Fiscal Year 1980 base for transcription services?

A. - There is $600,000 in the Fiscal Year 1980 base for transcription services. The initial FY 80 budget represented an underestimation of our current needs. At the time of the request, pricing was based on prior year experience which did not fully take into account the additional requirements of the final Reform Act package which requires that any appellant has the right to a hearing and that a transcript be kept.

While we were certainly aware that the Act provided for a hearing in all cases if the appellant so chose, we did not adequately assess the extent to which that right would be exercised. Therefore, due to our lack of experience with cases under the new Act, we were unable at that time to accurately project our actual needs and thus a fiscal shortfall occurred in this area. Based on our experiences in FY 1979, the Board now has an appropriate base upon which to project that approximately 4,000 Federal employees will request hearings during FY 1980; at approximately $400 per case, this volume translates into an annual expense of $1,600,000.

Q. - Please describe the need and purpose for transcription services to Federal employees?

A. - Prior to the passage of the Civil Service Reform Act, employees were afforded the right to a hearing only for certain types of adverse action appeals which represented 40% of the workload. However, since only one-half of the appellants in such adverse actions exercised this right, only 20% of the case load ultimately required hearings.

Section 7701, Title 5, United States Code, as amended mandates that the Board provide Federal employees a right ". . . to a hearing for which a transcript will be kept." The significance of this statement is that all Federal employees, regardless of the type of action taken against them, may request a hearing at ". . . which a transcript will be kept." Additionally, since all case hearings before the Board are appealable to the U.S. Courts of Appeals, transcripts of earlier hearings serve as the official documentation of proceedings.

Q. - An increase of $1,499,000 is also requested in Fiscal Year 1981 for transcription of hearings as requested by Federal employees. Has the Administration provided funding for this activity within its recommended total?

A. - Yes, the Administration has provided funding within its recommended total. The assumption underlying the Board's request of $1,499,000 was that the basis for any increase in FY 1981 must be the appropriated FY 1980 level. We did not include the proposed supplemental request in our computations. Now that OMB has (1) recommended a supplemental for FY 1980 and (2) carried this new base forward into FY 1981, $860,000 of the requested $1,499,000 has been included in the Administration's base.

Q. - Are these services being provided now?

A. - At the present time, services are still being provided.

Field Operations

Q. - The Agency entertains employee appeals at the field level. To what extent are cases settled in the field without reivew by the Board in Washington?

A. - The Civil Service Reform Act, the Board's regulations and our general expectation is that almost all cases will be decided in the several field offices. That is, we fully expect that the initial decision of the presiding official will be the final decision of the Board. As evidenced by the chart below, the statistics have clearly measured up to this expectation. This is true despite our reliance on new provisions of law and the resultant lack of administrative or judicial precedents upon which we can depend.

Reform Act cases closed - - - - - - - -	2,717
Petitions for review received - - - -	653
Number of reopenings- - - - - - - - - -	62
Percentage of petitions - - - - - - - -	24%
Percentage of reopenings- - - - - - - -	2%
Percentage of petitions and reopenings combined - - - - - - - - -	26%

Q. - Are all field cases reviewed in Washington? If so, doesn't this represent an unnecessary workload?

A. - All of the initial decisions issued by presiding officials in our several field offices are reviewed in the headquarters offices of MSPB. In our judgment, notwithstanding the fact that the initial decisions are expected to be correct and final, this does not represent an unnecessary workload. To the contrary, in our judgment, it is work which was anticipated by the Congress as evidenced by the plain meaning of 5 U.S.C. §7701(b) and 5 U.S.C. §7701(e) which provides for "petitions for review" and "own motion review" by the Board.

The Board believes that headquarters review is critical in this early period of operation under the new legislation to assure proper adjudication of appeals, because of our posture and responsibility at court under 5 U.S.C. §7703, and because we as a Board want to assure that decisions issued in the field comport with: (1) the law (much of which is new), (2) precedent administrative and court decisions, (3) Board and other relevant regulations, and (4) orders and opinions of the Board. Moreover, this review provides a basis for rating the performance and training needs of our presiding officials and other staff.

Q. - Since January 1, 1979, the field operation received 3,670 employee appeal cases. Approximately 2,700 of these cases have been closed. How many cases remain open at the current time?

Q. - Of those cases that remain open, how many will be processed within the required 120-day time frame?

A. - In computing the number of pending cases at any given time, it is essential to understand that, though the number of pending cases may be large, the vast majority are still within the Board's self-imposed 120-day goal for processing appeals. For example, in calendar 1979, 3,672 Reform Act appeals were filed with the Board. Of these 3,672 appeals, 2,709 were processed to completion during the 1979 calendar year. The difference between these figures, 936 appeals, constituted the Board's workload of pending Reform Act appeals at the close of calendar 1979. Only twelve (12) of these cases were over 120 days old at the end of 1979. Because the remaining 951 appeals were filed with the Board during the last several months of 1979, the 120-day time limit for these cases consequently had not yet expired. Of these, few, if any, are still pending.

Of the 3,672 Reform Act appeals submitted to the Board during calendar year 1979, only 65, or approximately two (2) percent, took longer than 120 days to process. Of this two percent, completion of processing was delayed in most cases by unavoidable circumstances, such as illness or death of a party.

Furniture

Q. - How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget request?

A. - There is $175,000 allocated in the line item "equipment." Within this classification, $50,000 has been allocated for furniture. Similarly, in the 1980 request, $50,000 was allocated to furniture.

When the Civil Service Commission was abolished and the Merit Systems Protection Board created, personnel and a limited amount of furniture and equipment were transferred to the Board to support the functions which it received. The Civil Service Reform Act in its final form assigned new functions to the Board, and the Congress has authorized additional personnel to support those responsibilities. Therefore, the Board has been forced to purchase additional furniture and equipment. In this regard, we have worked with the GSA in attempts to secure and purchase used furniture, surplus equipment, and similar items from other Federal agencies, in an effort to keep our costs to a minimum.

OFFICE OF SPECIAL COUNSEL

Q: THE OFFICE OF SPECIAL COUNSEL HAS REQUESTED AN INCREASE OF $754,000 AND 22 POSITIONS. $321,000 AND 10 POSITIONS OF THIS INCREASE IS FOR FOUR PLANNED INVESTIGATIONS OF PROHIBITED ACTIVITIES. PLEASE DESCRIBE THE PROHIBITED ACTIVITIES AND INVESTIGATIONS THAT ARE PLANNED.

A: No specific investigation is planned as yet. The budget requested would provide the staff needed to analyze the nature of the allegations received or being received as well as other information to determine particular matters suitable for investigation. The purpose would be: to investigate (in particular agencies or government-wide) patterns of prohibited personnel practices or the appearance thereof and situations in which prohibited personnel practices appear likely to occur; to identify their causes; and to recommend corrective action or otherwise attempt to prevent prohibited personnel practices from occurring, While we have not as yet been able to analyze the information on hand, areas which may well lend themselves to such investigation could be merit promotion practices which now account for 20 percent or more of the complaints received and agency actions related to reorganizations and transfers of functions which often generate substantial numbers of employee complaints.

Q: THE OFFICE HAS ALSO REQUESTED AN INCREASE OF $433,000 AND 12 POSITIONS TO DEVELOP AND IMPLEMENT A "HOTLINE/INFORMATION OUTREACH PROGRAM." HOW MUCH FUNDING IS CURRENTLY IN THE BASE FOR THE OFFICE'S HOTLINE PROGRAM?

PLEASE DESCRIBE THE NEED FOR THE PROPOSED PROGRAM ENRICHMENT.

A: No funding is currently provided for a Hotline or Information Outreach Program.

Allegations and requests for information received telephonically are handled by investigators and attorneys designated on a rotational basis -- currently for one week at a time -- to deal with these calls in addition to their other on-going investigative and legal work. This method, adopted out of necessity, is inefficient and disruptive of the work needed to be performed by the employee detailed to this duty and is not adequately responsive to employees and others who call in. We cannot provide the public a single "information" number to call and consequently, callers must frequently be transferred or referred to the number of the "Officer of the Week." The sufficiency of the information received or provided cannot be adequately monitored. Structural changes to improve this activity within existing resources would necessitate diverting resources from the primary investigative and prosecutorial program thus undermining the effectiveness of that program which we are just getting to the point of being reasonably effective.

The staffing level proposed would enable this activity to be performed either centrally (with all calls received centrally in Washington, D.C.) or decentralized with each of the 5 field offices and the headquarters offices involved. Under either option, the staff assigned to this function would also provide the primary staff resources for planning and implementing our information outreach program.

NEED FOR SPECIAL COUNSEL TO ENCOURAGE EMPLOYEES TO REPORT PROHIBITED PRACTICES

Q: THE GENERAL ACCOUNTING OFFICE ALSO REPORTED IN OCTOBER 1979 THAT THE SPECIAL COUNSEL NEEDED TO ACTIVELY INFORM AND ENCOURAGE EMPLOYEES TO REPORT INSTANCES OF PROHIBITED PRACTICES AND OTHER ABUSES. WHAT ACTIONS HAVE BEEN TAKEN BY YOUR OFFICE IN THIS RESPECT?

A: We have drafted an informational pamphlet which we plan to have printed and distributed to all agencies shortly. We are also developing a poster advising employees of their rights and procedures for reporting matters to the Special Counsel which will be distributed to all agencies for posting on bulletin boards at agency installations and offices. Completion of both of these projects has been somewhat delayed by delays in getting permanent office space -- here in Washington, D.C. as well as at field locations -- so that we can provide valid addresses and telephone numbers.

We are also accepting requests for representatives of the Office to speak on the functions and operations of the Office before employee groups, professional organizations, and the like. The establishment of the field and branch offices is also contributing to making the Office more visible to employees.

Finally, our increasing ability to respond more timely and directly to employee complaints and allegations will, we believe, increase employee confidence in the Office and lead to increased reporting of improper personnel actions.

Q: FROM YOUR EXPERIENCES THUS FAR WITH THE WHISTLEBLOWER PROVISIONS OF THE ACT DO YOU THINK YOUR ROLE AND AUTHORITY ARE APPROPRIATE? IS THERE A NEED FOR ANY CHANGES?

A: By "Whistleblower Provisions", we presume reference is made to the provisions of section 1206(b)(2) for referring allegations of agency wrongdoing to the agency head for necessary action. In this regard, the role and responsibility of the Special Counsel as established by the Congress appear to be clear in the statute and in its legislative history. However, it appears that there is not clear understanding by employees and some others as to the statutory authority of the Special Counsel. For example, some employees and others appear to believe that the Special Counsel is authorized to investigate the substance of whistleblowing allegations. Others believe the Special Counsel should take a more aggressive role in assuring proper agency action on matters referred under section 1206(b)(3) for agency investigation and report to the Congress, the President, and the Special Counsel -- whereas the statute provides only that the Special Counsel review such report to determine whether the agency head's findings appear reasonable and the report contains the required information, without specifying what action the Special Counsel is expressly authorized or expected to take if the report is found deficient.

While we have not as yet had cause to question the sufficiency or adequacy of agency responses to our 1206(b)(3) referrals, legislative clarification of the Special Counsel's responsibility and authority in this regard may be helpful.

WHISTLEBLOWER DISCLOSURES

Q: HOW MANY WHISTLEBLOWER ALLEGATIONS AND COMPLAINTS HAVE BEEN RECEIVED BY THE AGENCY IN FISCAL YEAR 1980?

HOW MANY OF THESE CASES HAVE BEEN RESOLVED?

OF THOSE CASES RESOLVED, HOW MANY HAVE BEEN RESOLVED IN FAVOR OF THE COMPLAINANT?

A: We are unable to provide detailed and specific answers to these questions since -

- o Our records have not been automated as yet and a manual review of over 2,000 index cards and case files would be required; and
- o We would need to separate out --
    - Complaints and allegations relating to matters within our direct investigative jurisdiction;
    - "Whistleblower allegations" referrable to the agency head concerned;
    - Complaints and allegations which involve both of the above; and
    - Complaints and allegations not within the action purview of the Special Counsel.

Within that context:

- o We received over 2,000 complaints and allegations of all types during calendar year 1979. From January 1, 1980 to April 25, 1980, we received 550 complaints of all types.
- o During 1979, we closed slightly over 1,200 cases. Since January 1, 1980, we have closed 495 cases. We thus have approximately 850 cases pending.
    - With the additional investigators hired within the past 2 months, we are clearing-up the back-log and, when fully staffed by end of this fiscal year, expect to achieve a balance between new cases and closure of cases -- recognizing that the establishment of our field offices will generate an increase in case-load with the increased visibility of the Office.

- During 1979, 96 cases were referred to agency heads under the "whistleblower" provisions of the statute. Between January 1 and March 31, 1980 we referred 10 cases to agency heads, with investigations directed in 2 cases.

- Of the 96 cases referred in 1979, agency heads were required to investigate and report (to the Congress, the President, and the Office) in 20 cases.

Since an automated case record system is awaiting installation of our computer by GSA, we do not have a record of the number of cases resolved involving corrective action favorable to the employee or employees concerned. A large percentage of the cases are closed after an initial review of material submitted by the complainant either because (1) the matter is not within our jurisdiction (we try to refer such complainants to some other source of possible help); (2) no activity prohibited by the Reform Act is alleged; or (3) the matter may be more appropriately resolved under an administrative appeals procedure and we are precluded from investigating it [5 U.S.C. 1206(e)(2)].

We estimate that of the remainder of the cases approximately one-fourth are resolved with corrective action of some type favorable to the employees after further inquiry or a full investigation.

Q: FOR THOSE CASES STILL UNRESOLVED, WHAT IS THE AVERAGE LENGTH OF TIME THE OFFICE EXPECTS THESE CASES TO BE PENDING FROM THE DATE OF RECEIPT TO THE DATE OF RESOLUTION?

A: We are, with the additional staff now on board, moving to clear-up all the unresolved 1979 cases within the next 90-120 days, while maintaining reasonable currency on all new cases. While we cannot predict how long it will take to investigate any particular allegation, the actual time involved may range from one day or less to four or five months. The longer time period is involved when formal recommendations for corrective action are submitted to agencies pursuant to 5 U.S.C. 1206(c)(1). In many instances agencies are willing to take corrective action without the need for submission of a full investigative report and formal recommendations to the agency.

Q: WHEN THE SPECIAL COUNSEL REQUIRES AN AGENCY TO CONDUCT AN INVESTIGATION OF A WHISTLEBLOWER COMPLAINT AND SUBMIT A REPORT ON THE RESULTS, YOUR OFFICE IS REQUIRED TO MAKE A DETERMINATION ON WHETHER THE FINDINGS OF THE AGENCY APPEAR REASONABLE.

WHAT DO YOU DO TO ASSURE THAT THE INFORMATION REPORTED IS ACCURATE AND THE FINDINGS REASONABLE?

A: The staff investigator or attorney assigned the case reviews the agency report for reasonableness and compliance with 5 U.S.C. 1206(b)(4), and prepares a review memorandum for the approval of the Special Counsel. In many cases, we invite the original source of the allegation to comment. Even without an express invitation to comment, most original complainants do submit their comments or rebuttals if they disagree or find fault with the agency report. The possibility of submitting highly technical reports to experts in the field for review is presently under consideration.

Q: WHO PERFORMS THESE INVESTIGATIONS WITHIN THE AGENCIES?

A: Normally, the Inspector General when there is an agency inspector general. Otherwise, depending on the nature of the allegation, the investigative or internal audit arm of an agency and on occasion, the General Counsel.

Q: ARE FEDERAL AGENCIES SUBMITTING REQUIRED REPORTS AND RESPONSES?

ARE THEY SUBMITTED IN A TIMELY MANNER?

A: Generally, agencies have been submitting reports and responses as requested.

Agencies do have difficulty in meeting the 60-day reporting requirement under section 1206(b)(3). Extensions of time have been granted by the Special Counsel, in writing, upon agency request for valid reasons. We expect that with more experience in investigating and reporting on allegations submitted by the Special Counsel, agencies will find it easier to meet the time limits.

Q: HOW IS THE CONFIDENTIALITY OF WHISTLEBLOWERS BEING PROTECTED?

A: By not disclosing the identity of sources of allegations to anyone -- unless such disclosure is necessary to take or enable action in the allegation and then only if the source consents in writing to such disclosure.

Questions Submitted by Senator Schmitt

1. Can a government employee be fired for "unacceptable performance"? What have you done to invalidate or alter regulations that touched on firing for cause?

A. An agency may remove an employee for "unacceptable performance" by following the requirements of Section 203 of the Civil Service Reform Act of 1978 (Chapter 43 of Title 5, United States Code). The validity of such action will be determined by the Board using the substantial evidence standard set forth at Section 205 of the Act (5 U.S.C. §7701). In addition, an agency may remove an employee for any cause which will promote the efficiency of the service, including "unacceptable performance," by following the requirements of Section 204 of the Act (Chapter 75 of Title 5, United States Code). The validity of that action will be determined using the preponderance of the evidence standard, also set forth at Section 205 of the Act.

In Wells v. Harris, MSPB Order Number RR-80-3, dated December 17, 1979, the Board reviewed and declared invalid a single section of the regulations issued by OPM to implement Section 203 of the Act. That section allowed an agency to remove an employee under the expedited procedures of Section 203 before it established a performance appraisal system which covered that employee. The Board found that Congress, in enacting Section 203 of the Civil Service Reform Act, had intended Federal agencies to have the performance appraisal systems described therein approved by OPM and in place before the expedited procedures of that section could be invoked.

Under the Act, each agency must develop its performance appraisal systems no later than October 1, 1981. The Board understands that a number of agencies have already established such systems. In the absence of such a system, an agency may nonetheless remove an employee for unacceptable performance by following the requirements of Section 204 of the Act. The Board has done nothing to invalidate or alter regulations concerning removal for cause under Section 204.

2. How active has your office of "whistle-blower protection" been over the past year: How many cases?

> This question has been answered separately and submitted independently to the Committee by the Office of Special Counsel.

3. How would you handle a 10% cut to your request?

A. The operations of the Merit Systems Protection Board would be crippled by a 10% cut in its FY 81 request. A cut of that magnitude would reduce our request to $13,961,000--a level that is well below what is required simply to maintain operations at the FY 80 level. The Board faces, in FY 81, nearly $2 million in increased, uncontrollabe costs. In the coming year, MSPB must fund a required increase of $250,000 in S.L.U.C. for its headquarters space as well as $1,240,000 resulting from FY 80 annualized personnel actions. Furthermore, as is explained in our response to question 7, below, an additional $1,000,000 is required to fund statutorily required transcription costs arising out of an increase in hearings before the Board.

Since a 10% cut in the Board's FY 81 request would not permit operations at the current level, the Board would be significantly disabled from carrying out its statutory responsibilities. Personnel layoffs which would follow such a cut would, for example, inevitably lead to a Reform Act case backlog, similar to that which crippled our predecessor agencies.

4. On May 18, 1979, did you not relax your freeze on travel and allow hearings to be held at field sites outside of field offices?

A. In May of 1979, the Board, in an effort to avoid a budget deficiency, instituted a freeze on travel, hiring, and purchase of nonessential equipment. The freeze was lifted in August 1979, when the Board secured its FY 79 supplemental appropriation. During the freeze, some limited travel was permitted to conduct some appeals hearings.

4A. On October 1, 1979, how did you handle the travel restriction in the current years appropriation bill?

A. The Board complied with Congressional/OMB wishes and reduced its travel ceiling by 8% or $31,000.

5. Mrs. Prokop, how much was the amount of your lapsed funds on September 30, 1979?

A. The Board lapsed $33,000--less than one-half of one percent of its budget authority.

6. Mrs. Prokop, we have heard about your inherited backlog of cases. The Civil Service Commission transferred to you funds to handle this backlog, didn't they?

A. The Civil Service Commission did not transfer funds to handle our inherited backlog of cases. The Board received $5,826,000 in its Determination Order to provide funding for personnel and some related support costs, to handle ongoing operations, but no funding was allocated for processing inherited, unprocessed cases of the predecessor organizations.

In April of 1979 the Board discovered that even though we worked very hard to control procurement and kept our staffing under strength, the accounting reports provided us by the Office of Personnel Management continued to run well above anticipated levels. Our financial situation grew so severe that in May a freeze on hiring, procurement, and travel as discussed in the response to question 4, above, was imposed.

The Board was initially at a loss in its attempt to understand the source of its shortfall. It was only as a final effort that the staff went back to our original budget allocation (our initial Determination Order) to examine its adequacy. It immediately became clear that the Board should have received approximately $640,000 more than was initially transferred. It was at this point the Board sought redress. We appealed both to OMB and to the OPM for relief. Subsequent decisions resulted in the Board receiving only $115,000 of its request. The problem was of such a severe nature that the

House Government Operations Committee asked the General Accounting Office to conduct an investigation of the process in order to determine the initial funding level for the Board.

Were it not for the receipt of FY 79 supplemental funding in early August, the Board would have been hard pressed to meet many of its financial obligations.

6A. Tell us precisely how you used the supplemental funds you got last year?

A. The Board requested and received $1,426,000 in supplemental funding during fiscal year 1979. Approximately 55% of these monies were used to fund the October 1, 1979 pay raise, to establish the Board's library, and to develop a case tracking system that would provide the capability to determine, at any time, the status of any appeal or court action involving the Board. The remaining 45% of the supplemental funds was used to cover the shortfall created by under-funding in the initial Determination Order, as described in the response to question 6, above. That Order provided funding for personnel and some travel, but not for other required activities. These activities include transcription services for appeals hearings, minimal staffing of the Merit Systems Review and Studies program, and the purchase of printing and reproduction services, equipment and supplies necessary for a newly created agency.

6B. With those supplemental funds obtained from Congress for "old system" case processing work, did you or did you not hire additional staff? (Were presiding officials or Chief Appeals Officers hired for either the field offices or the offices of appeals for appeals processing work?)

A. The Board received authority to obligate FY 79 supplemental funds on July 31, 1979, just 61 days before the end of the fiscal year. It was not until this time that the Board was able to begin active recruitment. In an attempt to build a representative, high-quality workforce our recruitment process lasted approximately four months, resulting in the hiring of approximately 40 persons, including Chief Appeals Officers and presiding officials, who possess the skills and dedication to implement the requirements of the Civil Service Reform Act of 1978.

7. If you cannot answer in detail at this time, would you submit for the record a detailed analysis of how supplemental funds for processing alleged case backlogs will be used?

A. Fiscal year 1980 supplemental funds will not be used for processing case backlogs. Our request is based on the need for funds to meet the cost of statutorily required transcription costs. Prior to the passage of the Civil Service Reform Act, hearings requiring transcription services were held only for those cases resulting from the attempt to discipline Federal employees through removal, demotion, or suspension in excess of fourteen days. These adverse action cases represented forty percent of the former Federal Employee Appeals Authority (FEAA) workload. In approximately fifty percent of these cases transcription services were provided. The impact on the total workload of the FEAA was that only 20% of all cases received were provided transcription services.

The Merit Systems Protection Board now has the responsibility for providing the necessary legal protections from abuses of personnel practices to all Federal employees. Section 7701 of the Civil Service Reform Act mandates that the Board provide Federal employees a right ". . . to a hearing for which a transcript will be kept." The significance of this statement is that all Federal employees, regardless of the type of action taken against them, may request a hearing at ". . . which a transcript will be kept." Additionally, since all cases heard before the Board are appealable to the U.S. Courts of Appeals, transcripts of earlier hearings serve as the official documentation of proceedings.

The initial FY 80 budget represents an underestimation of our current transcription costs. At the time of the request, pricing was based on prior year experience which did not include the requirements as expanded by the final Reform Act package. Current experience is showing a higher incidence of appellants requesting hearings and therefore we estimate a need for additional funds. The Merit Systems Protection Board is projecting that approximately 4,000 Federal employees will request hearings during FY 80. At a cost of $400 per hearing, the new FY 1980 requirement for transcription services is $1,600,000. Thus the original request of $600,000 falls $1,000,000 short of the minimum projected needs of the Merit Systems Protection Board. Accordingly, we have requested a $1,000,000 supplemental for FY 80 to meet our statutory obligation to bear the cost of hearing transcription.

2. HOW ACTIVE HAS YOUR OFFICE OF "WHISTLE-BLOWER PROTECTION" BEEN OVER THE PAST YEAR: HOW MANY CASES?

A. The Office of the Special Counsel of the Merit Systems Protection Board, in a letter to Mike Hall of the Subcommittee, dated May 12, 1980, gave detailed information concerning its "whistleblower" caseload for the past year. For the purpose of maintaining a clear and consistent record, we are attaching a copy of the previous response of the Office of the Special Counsel dealing with whistleblower cases.

WHISTLEBLOWER DISCLOSURES

Q: HOW MANY WHISTLEBLOWER ALLEGATIONS AND COMPLAINTS HAVE BEEN RECEIVED BY THE AGENCY IN FISCAL YEAR 1980?

HOW MANY OF THESE CASES HAVE BEEN RESOLVED? -

OF THOSE CASES RESOLVED, HOW MANY HAVE BEEN RESOLVED IN FAVOR OF THE COMPLAINANT?

A: We are unable to provide detailed and specific answers to these questions since -

- Our records have not been automated as yet and a manual review of over 2,000 index cards and case files would be required; and

- We would need to separate out --
  - Complaints and allegations relating to matters within our direct investigative jurisdiction;
  - "Whistleblower allegations" referrable to the agency head concerned;
  - Complaints and allegations which involve both of the above; and
  - Complaints and allegations not within the action purview of the Special Counsel.

Within that context:

- We received over 2,000 complaints and allegations of all types during calendar year 1979. From January 1, 1980 to April 25, 1980, we received 550 complaints of all types.
- During 1979, we closed slightly over 1,200 cases. Since January 1, 1980, we have closed 495 cases. We thus have approximately 850 cases pending.
  - With the additional investigators hired within the past 2 months, we are clearing-up the back-log and, when fully staffed by end of this fiscal year, expect to achieve a balance between new cases and closure of cases -- recognizing that the establishment of our field offices will generate an increase in case-load with the increased visibility of the Office.
  - During 1979, 96 cases were referred to agency heads under the "whistleblower" provisions of the statute. Between January 1 and March 31, 1980 we referred 10 cases to agency heads, with investigations directed in 2 cases.
  - Of the 96 cases referred in 1979, agency heads were required to investigate and report (to the Congress, the President, and the Office) in 20 cases.

Since an automated case record system is awaiting installation of our computer by GSA, we do not have a record of the number of cases resolved involving corrective action favorable to the employee or employees concerned. A large percentage of the cases are closed after an initial review of material submitted by the complainant either because (1) the matter is not within our jurisdiction (we try to refer such complainants to some other source of possible help); (2) no activity prohibited by the Reform Act is alleged; or (3) the matter may be more appropriately resolved under an administrative appeals procedure and we are precluded from investigating it [5 U.S.C. 1206(e)(2)].

We estimate that of the remainder of the cases approximately one-fourth are resolved with corrective action of some type favorable to the employees after further inquiry or a full investigation.

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A: We are, with the additional staff now on board, moving to clear-up all the unresolved 1979 cases within the next 90-120 days, while maintaining reasonable currency on all new cases. While we cannot predict how long it will take to investigate any particular allegation, the actual time involved may range from one day or less to four or five months. The longer time period is involved when formal recommendations for corrective action are submitted to agencies pursuant to 5 U.S.C. 1206(c)(1). In many instances agencies are willing to take corrective action without the need for submission of a full investigative report and formal recommendations to the agency.

Q: WHEN THE SPECIAL COUNSEL REQUIRES AN AGENCY TO CONDUCT AN INVESTIGATION OF A WHISTLEBLOWER COMPLAINT AND SUBMIT A REPORT ON THE RESULTS, YOUR OFFICE IS REQUIRED TO MAKE A DETERMINATION ON WHETHER THE FINDINGS OF THE AGENCY APPEAR REASONABLE.

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A: The staff investigator or attorney assigned the case reviews the agency report for reasonableness and compliance with 5 U.S.C. 1206(b)(4), and prepares a review memorandum for the approval of the Special Counsel. In many cases, we invite the original source of the allegation to comment. Even without an express invitation to comment, most original complainants do

submit their comments or rebuttals if they disagree or find fault with the agency report. The possibility of submitting highly technical reports to experts in the field for review is presently under consideration.

Q: WHO PERFORMS THESE INVESTIGATIONS WITHIN THE AGENCIES?

A: Normally, the Inspector General when there is an agency inspector general. Otherwise, depending on the nature of the allegation, the investigative or internal audit arm of an agency and on occasion, the General Counsel.

Q: ARE FEDERAL AGENCIES SUBMITTING REQUIRED REPORTS AND RESPONSES?

ARE THEY SUBMITTED IN A TIMELY MANNER?

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Agencies do have difficulty in meeting the 60-day reporting requirement under section 1206(b)(3). Extensions of time have been granted by the Special Counsel, in writing, upon agency request for valid reasons. We expect that with more experience in investigating and reporting on allegations submitted by the Special Counsel, agencies will find it easier to meet the time limits.

Q: HOW IS THE CONFIDENTIALITY OF WHISTLEBLOWERS BEING PROTECTED?

A; By not disclosing the identity of sources of allegations to anyone -- unless such disclosure is necessary to take or enable action in the allegation and then only if the source consents in writing to such disclosure.

FEDERAL LABOR RELATIONS AUTHORITY

STATEMENT OF RONALD W. HAUGHTON, CHAIRMAN, FEDERAL LABOR RELATIONS AUTHORITY

ACCOMPANIED BY:

HENRY B. FRAZIER III, MEMBER
LEON B. APPLEWHAITE, MEMBER
H. STEPHAN GORDON, GENERAL COUNSEL

BUDGET REQUEST

Senator DeConcini. The committee will now receive testimony from the Federal Labor Relations Authority regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. For fiscal year 1981 $14,541,000 and 424 permanent positions have been requested, and $570,000 have been requested for the fiscal year 1980 supplemental. The fiscal year 1980 supplemental includes $570,000 for the 1979 pay raise and supplemental appropriation language change to increase the travel allowance.

The committee is pleased to have Ronald Haughton, Chairman of the Federal Labor Relations Authority, with us today to present the testimony.

PREPARED STATEMENT

Mr. Haughton, your full statement will be included in the record. If you would please introduce your colleagues and summarize your statement.

[The statement follows:]

Statement of Ronald W. Haughton

I am pleased to appear before you today to discuss the Federal Labor Relations Authority's fiscal year 1981 budget request. First, I would like to introduce my associates to you. Other Members of the Authority are Mr. Henry Frazier and Mr. Leon Applewhaite and the General Counsel is Mr. Stephen Gordon.

Our budget request for fiscal year 1981 is $14,541,000 and 424 full-time permanent positions. This request is necessary to allow the Authority to carry out its assigned responsibilities as set forth in the Federal Labor-Management Relations Statute (Title VII of the Civil Service Reform Act of 1978).

The Federal Labor Relations Authority was created in January 1979 to provide leadership in establishing policies and guidance related to matters under the Federal labor-management relations program. The Authority is comprised of a National Headquarters office and nine regional offices.

Since January 1979 when the Authority came into being, it has been faced with a rapidly expanding caseload. Our largest area of case activity is unfair labor practice charges. The total caseload will have grown from about 2,880 in fiscal year 1979 to about 6,850 cases in fiscal year 1981, which includes 4,200 new cases in that fiscal year. These cases must all be investigated, and a substantial number are prosecuted before an Administrative Law Judge and finally presented to the Authority Members for a decision. The initial action taken on unfair labor practice cases rests with the General Counsel, so I will not discuss this area at any greater length. General Counsel Gordon will be discussing this activity in his statement.

In addition to the increased unfair labor practice charges, the agency is experiencing a substantial increase in cases being filed directly with the Authority, or otherwise reaching the Authority for final action. These include exceptions to arbitrator's awards, negotiability determinations, representation determinations and final decisions on unfair labor practice cases.

Exceptions to arbitration awards represent appeals by one of the parties to an arbitrator's award. The Authority's total caseload for these cases will increase from 65 in the Authority's 1979 fiscal year, a figure including 44 new appeals in addition to cases carried over, to a total caseload of 367 in fiscal year 1981, which would include 270 new cases in addition to those cases carried over from the prior year. Negotiability issues represent appeals of an agency's determination during the course of collective bargaining that certain items are not negotiable. The appeals caseload of negotiability issues will increase from 172 new cases in fiscal year 1979, plus 4 cases carried over, to a total of 435 cases in fiscal year 1981, which would include 240 new appeals in that fiscal year. The total caseload for representation and unfair labor practice cases will increase from 340 in fiscal year 1979, a figure reflecting case activity from October 1, 1978, before the Authority came into existence, and including 220 new cases in that period, to 840 in fiscal year 1981, which would include 486 new cases in that fiscal year. All of these cases must be handled in a timely and fair manner in order to effectuate the purposes of the Statute and thus promote constructive and cooperative relations between labor organizations and management.

The Office of Administrative Law Judges, at the Authority level is responsible for hearing the unfair labor practice cases prosecuted by the General Counsel. The caseload here will increase from 214 in fiscal year 1979 to 730 in fiscal year 1981. This office is authorized ten Administrative Law Judges who, during fiscal year 1980, will handle as many as 36 cases each per year. However, the projected 1981 caseload of 730, would, with a projection of 38 cases produced by each judge, require some 19 Administrative Law Judges, assisted by law clerks.

The new and expanded functions prescribed by the Statute, together with the fact that the filers of unfair labor practice charges no longer are responsible for the prosecution of any unfair labor practice complaints, has brought about this increase in case activity. In order to speed the resolution of disputes, certain case management initiatives to ensure removal of any non-essential case handling procedures have been instituted by the Authority and General Counsel.

These include a minimum level review of cases by management, while still assuring quality, and the establishment of goals for case productivity levels as well as time deadlines for separate processing steps. Also, the Authority is in the process of designing and implementing an automated case tracking system to allow management to control potential problem areas.

In fiscal year 1981, the Authority will finally acquire and relocate to consolidated office space. Also in the area of Administrative activities, the Authority will be going on-line with automated financial and personnel management information systems.

In conclusion, my fellow Authority Members and I would like to state that we are happy with the progress of the Federal Labor Relations Authority in its first year. It has been a great challenge for us to establish a new agency and to assure that it effectively administers the Federal service labor-management relations program. In order to keep pace with the rapidly increasing workload and to implement the internal management information systems described, it is our greatest concern that the Congress act favorably upon the fiscal year 1981 request now pending.

Mr. HAUGHTON. Thank you very much, Mr. Chairman. I am very happy to be here. My colleagues are—on my left, Mr. Henry Frazier, a member of the Authority; on my immediate right is Mr. Leon Applewhaite, a member of the Authority; on his right is Mr. Stephan Gordon, General Counsel, an independent function in our agency.

Our budget request for fiscal year 1981 is $14,541,000 and 424 full-time permanent positions. This request is necessary to allow the Authority to carry out its assigned responsibilities as set forth in the Civil Service Reform Act.

The Federal Labor Relations Authority was created in January 1979 to provide leadership in establishing policies and guidance related to matters under the Federal labor management relations program. We have a national headquarters and nine regional offices.

EXPANDING CASELOAD

Since January 1979, when the Authority came into being, it has been faced with a rapidly expanding caseload. Our largest area of case activity is unfair labor practice charges. The total caseload will have grown from about 2,880 in fiscal year 1979 to about 6,850 cases in fiscal year 1981, which includes 4,200 new cases estimated to be received in that fiscal year. These cases must all be investigated, and a substantial number are sent for hearing before an Administrative Law Judge and finally presented to the Authority members for a decision. The initial action taken on unfair labor practice cases rests with the General Counsel, who is, in effect, a prosecutor. I will not discuss at greater length what he does.

In addition to increased unfair labor practice charges——

Senator DeConcini. Mr. Haughton, let me interrupt you. Because of the time restraints we are not going to be able to take the testimony of each and every witness here. If you want them to summarize their statements or if you want to summarize them, I have a few questions I want to get at. So if you could summarize your statement and let the other people summarize, we will put them in the record.

Mr. Haughton. Thank you for that suggestion, Senator. My basic summary is that now that we have had 1 full year's experience, we can project into 1981 a rather substantially increased caseload. We are going to heavily rely upon the voluntary process of labor and management settling their own disputes. That process will be encouraged at every step of our procedure. But we do find that the caseload, both in the field and at our national Authority level, simply does require the requested increase of 62 positions, and a fiscal 1981 budget of $14,541,000. This should enable us to keep pace with a caseload that keeps building up.

With that, my two Authority members and I will be available for questions. I would appreciate it if my full statement is made a part of this record. Now, I would like to turn to the General Counsel, Stephan Gordon, for his presentation.

PREPARED STATEMENT

Mr. Gordon. Mr. Chairman, I have submitted a statement for the consideration of the committee. In the interest of time, I will respectfully ask that it be made a part of the record.

Senator DeConcini. Without objection, it will appear in the record.

[The statement follows:]

STATEMENT OF H. STEPHAN GORDON

I am pleased to have the opportunity to appear before you today to discuss this FY 1981 budget request for the Office of the General Counsel of the Federal Labor Relations Authority. The Office of the General Counsel is responsible for investigating alleged unfair labor practices under the Federal Service Labor-Management Relations Statute. The office is also responsible for prosecuting unfair labor practice complaints before administrative law judges and for processing representation cases through investigation, and through hearing and election as required. The Office of the General Counsel is responsible for exercising general supervision over all employees in the Regional Offices, and for the effective and efficient operation and administration of the Authority's nine Regional Offices. The Office also provides advice, assistance and review of all phases of field office performance to ensure adherence to case handling standards. In addition to the Regional Offices, the Office of the General Counsel includes a Division of Appeals, which is responsible for reviewing appeals from the refusal of Regional Directors to issue complaints on unfair labor practice charges.

The procedures used by the Office of the General Counsel to process the caseload with which we are faced are outlined in considerable detail in the budget submission and I believe it would serve no useful purpose to burden this record with further explanations. I shall, of course, be happy to answer any questions you may have in this regard.

The Chairman has already emphasized the tremendous growth in caseload over our previous levels. In this regard, permit me to stress the fact that we have no control over this caseload but rather react to unfair labor practice charges and questions of representation which are filed with a Regional Office by labor organizations, agencies or individuals.

For Fiscal Year 1981, the agency is requesting $8,695,000 and 246 positions for the operation of the General Counsel. This represents an increase of 42 budget positions and $783,000 over the previous year. These positions, if approved, are all earmarked for activities directly associated with case processing.

They are necessary for the Office of the General Counsel to process the incoming caseload in a reasonably effective and timely manner.

I particularly welcome the opportunity to appear before you today, because this is really my first opportunity to discuss the Agency's budget request insofar as it pertains to the Office of the General Counsel. Thus, while the Agency has been in existence for a little more than a year, the Office of the General Counsel really became operational only about 9 months ago, when the Senate confirmed my appointment as General Counsel. During that relatively short period of time, the monthly case intake has steadily increased by approximately 160 percent from the Agency's original estimates in FY 1979. More specifically, while our representation caseload has held fairly constant at approximately 52 cases received monthly, the number of cases involving alleged unfair labor practices increased from an average of 130 cases filed monthly during the first three months of the program to an average of 333 new cases filed monthly during the last three months of FY 1979. More significantly, during the first 3 months of the current calendar year, the ULP case intake has risen to an average of 420 cases per month. This sharp steady rise in ULP case intake clearly indicates that we will undoubtedly exceed the case intake figures projected for FY 1980 as well as those projected for FY 1981.

Mr. Chairman, I stress this fact not only in order to emphasize the need for the requested increases in staff, but also as an explanation that our prior overly conservative estimates were made in a relative vacuum. Unlike old-line agencies such as NLRB, this Agency, being brand new, had no prior guidelines against which to make realistic assessments. It is only now that a potential caseload picture is emerging which permits us to evaluate on a somewhat realistic basis what workload we are facing. Moreover, I respectfully submit that while even now our anticipated case intake projections are somewhat speculative, they are still, if anything, overly conservative.

On the brighter side, I am happy to be able to report to the committee that we have made significant progress in taking dispositive aciton on these cases.

Thus, to be more specific, from January 11, 1979, the effective date of the Act, until March 31, 1980, a total of 6,166 cases were filed. (778 cases were transferred from the Department of Labor; 2,079 cases were filed between January 11, 1979 and August 1, 1979, the date I assumed the Office of General Counsel; and 3,309 additional cases have been filed between August 1, 1979 and March 31, 1980--for a total of 6,166 cases). During the same period, January 11, 1979 to March 31, 1980, we have disposed of 4,685 cases. (704 cases were disposed of between January 11, 1979 and August 1, 1979, the date of my confirmation; 3,981 cases have been disposed of during the period of August 1, 1979 and March 31, 1980). The fact that this was accomplished during a period when we also had to build the very foundations for this new Agency; when we had to recruit and train a new staff; and, as noted in two separate General Accounting Office reports, had to, and still have to, operate under almost impossible space and physical conditions, speaks, I believe, rather well for the dedicated men and women who serve in this new program.

Yet, despite these accomplishments and in spite of the substantial increases in productivity over the past year, it will become increasingly difficult for the Agency to keep pace with its growing caseload in a timely fashion. So far this year, it is taking approximately 4 months--113 median days--to make our initial decision in a case. This figure does not include times to conduct hearings in cases wherein a complaint is issued, to conduct elections, or to take other subsequent actions. We are making every effort to cut this time to a much lower level.

In order to keep case processing time to an absolute minimum; in order to preserve our limited resources; and because of a firm belief that the voluntary adjustment of disputes is essential to good labor-management relations, we are making every effort to encourage the parties to settle these cases prior to issuance of complaint. Currently, approximately 41% of all unfair labor practice cases filed with the Office of the General Counsel have had merit. After full and careful investigation, 59% have been dismissed or withdrawn for lack of merit. Of the 41% of the cases which were found to have merit, we have been able to obtain voluntary settlements in approximately 74% of the cases.

These statistics approximate, and indeed, compare most favorably with those in the private sector.

But again, I must reiterate that, in view of a constantly rising caseload, a factor over which we have no control, the Agency still faces major case handling problems. It is for this reason that all of the requested additional positions are earmarked for case processing functions; i.e. (1) the investigation of unfair labor practice charges; (2) the prosecution and settlement of unfair labor practice charges found to have merit; and (3) the resolution of appeals of dismissals of unfair labor practice charges by the Regional Offices.

With respect to the investigation of unfair labor practice charges, we are asking for 25 additional positions. During 1979, we opened a total of 2,348 cases and projected that we would open over 4,000 cases in 1980. We are currently already running ahead of that projection. In fact, we are currently approaching, and will in all probability exceed, our 1981 projection of 4,200 cases annually. The productivity of the staff and dispositive actions taken are increasing also. We took dispositive action on 1,403 cases last year, and anticipate doubling that number to over 2,800 cases this year. With the additional 25 positions being requested in this category, over 4,000 dispositive actions will be taken in 1981, matching our projected intake for that year. Having reached this level, we can then concentrate on eliminating the backlogs and reducing the case processing times to a manageable level. Without this increase, backlogs are projected to reach 13 months in 1981.

Of the remaining positions requested, thirteen are necessary to keep pace with the increased number of prosecutions and settlements resulting from the increased number of cases being investigated. So far this year we have issued a total of 315 complaints. Assuming a 43% merit factor in FY 1981, a total of 1,744 merit cases are projected to require settlement action or to result in the issuance of a complaint and prosecution. Receiving the additional 13 positions requested will enable us to take action on approximately 1,100 merit cases during 1981. Even at that staffing level the backlog of cases awaiting settlement or prosecution will increase to approximately 8 months in FY 1981. Without this increase, backlogs would grow to 21 months in 1981.

In addition to prosecutions and settlements, the increased number of cases being investigated will result in an increased number of dismissals of unfair labor practice charges by Regional Directors. Currently, approximately 46% of all dismissals are being appealed. With an estimate of approximately 1,150 new appeals being filed in 1981, we face a problem of significant backlogs in processing these appeals. The four additional staff positions requested in this case handling area will enable us to handle 23% more cases than we could otherwise, and thereby significantly reduce backlogs from a potential 19 months level.

It has been my pleasure to appear before you today. I want to echo the remarks of the Chairman that we have accomplished a great deal during our first year of operation. However, I also believe that the next two years are critical to a successful Federal service labor-management relations program. With our rapidly expanding caseload, I believe it is essential that we receive the additional resources which we are requesting. I appreciate your time, and will be happy to answer any questions you might have.

EXPLANATION FOR EXPANDED WORKLOAD

Senator DeConcini. The Federal Labor Relations Authority has requested an increase of $2.4 million and 62 positions to be made available in fiscal year 1981 over the level approved to date. Almost all of the requested increase is justified because of rapidly expanding caseload in all areas of case activity. Pursuant to title VII of the Civil Service Reform Act, which indicates that labor organizations and collective bargaining in the civil service are in the public interest, Federal labor unions have become more aggressive. Unions are appealing an ever increasing number and types of cases in an effort to expand the number of matters that are negotiable between Federal management and labor. Do you agree this is the single factor which explains the increasing workload at the Authority?

Mr. Haughton. That is so in part. Probably even more significant is the fact that this law has put labor relations in the Federal sector on a par with what has been in effect since 1935 in the private sector. We pay the freight. The Federal Government pays for the prosecution of cases, and accepts the burden of the investigations. Under the old Executive order, the burden was on the individual person, the union, or management to prosecute their own cases and to pay the freight. I submit it took a pretty aggressive Federal employee to do that. The fact is only 10 percent of all unfair labor practices were filed by employees under the old system. Fifty percent are filed by employees under the National Labor Relations Act system. It can be expected that individual filings will now contribute to an increased caseload for the FLRA. Further, the unions are pressing to test the parameters of the law, and can be expected to file more cases.

Senator DeConcini. Do you anticipate, or does your General Counsel anticipate, once you have been through 1 year or 2 of this a lessening, or is there any way of knowing from the NLRB or anyone else in the field?

Mr. Gordon. Mr. Chairman, it is really much too early to prognosticate. However, on the basis of many years of experience with the NLRB, I would say no, that there will not be a lessening. On the contrary, if NLRB is any guide, there will be an increase. The experience in the private sector at the National Labor Relations Board has been, over a period of 45 years, that their caseload has expanded at approximately 10 to 15 percent every year, despite the fact that you have 45 years of precedents and experience in court cases.

Senator DeConcini. So we are going to be expecting, Mr. Chairman, increases every year in order to meet your workload?

Mr. Haughton. Even after this 45 years the NLRB caseload is increasing about 15 percent a year. We do expect increases. However, we do not expect the dramatic increases that have occurred in the first 15 months to continue on a sustained basis for many more years.

INCREASES FOR FIELD OPERATIONS

Senator DeConcini. You point out your field operations in your statement and in your budget request. How much of the requested increase is for field operations?

Mr. HAUGHTON. There are 62 positions, and some 42 positions will be assigned to the General Counsel, who has primary jurisdiction over our field operations.

Mr. GORDON. Forty-two positions are assigned to the General Counsel, of which 38 would be assigned to the field operations and 4 positions would be assigned to the Office of Appeals, which reviews on an appellate basis dismissals from regional directors, dismissals of cases.

Senator DECONCINI. A recent GAO report states that your field structure currently consists of nine regional and three subregional offices. Based on your first year's experience with the geographic distribution of case filings, do you plan a reevaluation of your current regional structure?

Mr. GORDON. Mr. Chairman, that is a process which continues. It is going on at all times, these reevaluations. We have taken in the past year some actions and anticipate that we may take further actions.

Senator DECONCINI. What actions?

Mr. GORDON. For example, we are in the process of closing the Seattle office. The caseload didn't justify keeping it open. We have closed the Norfolk office. We have restructured, for example, the Philadelphia office, have transferred it from the Washington regional office to the New York regional office to bring about a better caseload distribution and more effective case handling. We are in the process of evaluating the opening of an office in Panama because the Congress has given us jurisdiction in Panama. We are planning to open an office in Hawaii because of the rather large caseload in Hawaii and the Pacific generally—Korea, Japan. And I think we can effectuate not only a savings, but also much more efficiency.

PRODUCTIVITY

Senator DECONCINI. We are very concerned, the committee, regarding productivity. Are you satisfied with the current productivity rate of the staff?

Mr. HAUGHTON. On a snapshot basis, yes. In terms of goals, no.

Senator DECONCINI. What action are you taking to achieve the goals?

Mr. HAUGHTON. We have set time targets. We have set up a special task force in the critical area of negotiability in the past year and deployed staff to it. That was more or less robbing Peter to pay Paul. We took staff out of arbitration appeal cases which were not quite as urgent. That was a stopgap method. We have since reorganized our internal structure so all staff are going to be generalists and will be working on negotiability, representation, unfair labor practices, arbitration cases, and can be deployed throughout the agency depending on urgency of cases and backlogs. We have cut out detailed internal briefings. We now accept oral briefings by the staff, backed up by case material. We have set up a new position of Chief Counsel to direct the whole internal case processing.

We are concerned about productivity and we do have goals. In the last fiscal quarter we rendered decisions on negotiability cases in a decreasing amount of time. We are now down to 4 or 5 months. But these are medians and we have some that are way out in the ball park. We have a few that were easy and procedurally short. But our goal is to get all these cases decided in 3 or 4 months. We admittedly have one-third of our staff brand new. The snapshot is not a criticism of them.

Senator DECONCINI. Do you have a training program?

Mr. GORDON. We have very detailed training programs and they have proven to be very, very effective.

If I may add, Mr. Chairman, as far as productivity is concerned, I would like to say one word about the field operation. We have reached at this point, despite some tremendous handicaps, a productivity rate of approximately 70 cases per staff-year in the field operation, which exceeds in the unfair labor practice area the productivity of the National Labor Relations Board in the private sector, despite the fact that, of course, the Board has many, many years of experience, has depth and has facilities and means.

Senator DECONCINI. What is your productivity rate?

Mr. GORDON. At this point approximately 70 cases per staff-year.

Senator DECONCINI. How does that turn out as a percentage of productivity increase?

Mr. GORDON. This is not an increase, Mr. Chairman, because we have only been in operation for 9 months.

Senator DECONCINI. How do you compare that with the NLRB, by how many cases they handle?

Mr. GORDON. Yes; NLRB's productivity per staff-year.

Senator DECONCINI. Are your cases similar to those?

Mr. GORDON. Almost identical.

Senator DECONCINI. The private sector is not that different from the governmental sector.

Mr. GORDON. No, sir.

Senator DECONCINI. Fine. I have no further questions.

Mr. HAUGHTON. Mr. Applewhaite has a statement for the record.

Mr. FRAZIER. I endorse and fully support the statements submitted by Mr. Haughton, Mr. Applewhaite, and Mr. Gordon.

Senator DECONCINI. We will put that in the record. Thank you very much for being here.

Mr. HAUGHTON. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF LEON B. APPLEWHAITE

I am pleased to appear before you today as one of the members of the Federal Labor Relations Authority. Chairman Haughton has presented you with a synopsis of the agency's accomplishments during the past year and its planned actions for fiscal year 1981.

The Authority is faced with an unexpected increase in case activity. For example, the Authority's total caseload of negotiability cases, which are filed directly with the Authority, is expected to increase by 150 percent from fiscal year 1979 to fiscal year 1981. Additionally, arbitration caseload will expand 465 percent and representation and unfair labor practice caseload by 147 percent. Overall this represents an increase in the caseload of 184 percent from fiscal year 1979 to fiscal year 1981. These figures represent only the rapid expansion in the National Headquarters of the Authority, and do not address the same situation which has developed in the Office of the General Counsel.

In view of this surge in caseload activity, to assure maximum productivity and minimum backlogs, we have reorganized our staff. As a result of a thorough review of our case handling processes and procedures, we have converted our case handling staff from narrow specialists to teams of generalists who are able to work on any case which requires attention.

The position of chief counsel has been established to supervise the case handlers and thus utilize the teams of generalists to meet any case processing needs.

I would be pleased to answer any question you may have on this issue.

Senator DECONCINI. We will have some additional questions to be answered for the record.

Mr. HAUGHTON. We will be pleased to answer them.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

21% Increase in Funding Proposed/Expanding Scope of Negotiable Items

Do you believe that this explosion in the number of suits and appeals is bringing an increasing number of relatively frivolous cases to the Authority for its action?

Does the Authority attempt to screen and dismiss the relatively more frivolous cases that come to it? If not, why not?

Certainly if the increases requested by the agency are not provided by the Congress some of the workload will either not be done or will be done in a more cursory manner. As a practical matter, what would be undesirable about forcing out some of the lower priority work in this manner?

It is impossible to state with any sense of accuracy what percentage of cases filed might be considered "frivolous." We do know that 40.5% of all unfair labor practice cases filed have been found to have merit. This merit factor is higher than that which exists in the private sector. Nor does the fact that a case is dismissed warrant the conclusion that it was filed frivolously. In this regard, it should be noted that dismissals of allegations of unfair labor practices constituted approximately 33% of all dispositive actions through the first six months of FY 1980. Of the total dismissal actions, approximately 40% have been the subject of formal appeals to the General Counsel, a clear indication that the charging parties involved were serious about asserting their rights under the Statute.

Our entire procedure is designed to assure that non-meritorious cases are disposed of in as little time as possible. When an unfair labor practice is filed and the investigation begun, at that point where it is determined that the charge is without merit the charging party is informed of this and given an opportunity to withdraw the charge. This may be after only a single affidavit from the charging party. If the charging party will not withdraw, the charge is dismissed by the Regional Director.

It should be stressed that even with the 40 percent of the unfair labor practice charges which do warrant the issuance of a complaint, our procedures strongly encourage the resolution by settlement rather than further litigation. We have been able to obtain voluntary settlement in about 73.5 percent of all meritorious ULP cases.

With respect to negotiability cases and exceptions to arbitration awards, there is no evidence that "frivolous" cases are filed in any significant numbers. Federal agencies and unions representing federal employees are bringing large numbers of cases to seek guidance on the meaning of the Statute. Some of these cases, of course, present more weighty issues than others. We have instituted case processing systems to get the less difficult cases decided as expeditiously as possible. That is, we have systems which result in each case being processed as quickly as possible.

Since Authority decisions on specific cases will clarify some of the statutory language and set precedent for many issues, at what point would you anticipate a decrease in your caseload?

The volume of cases would seem to indicate that parties are in part testing the new law. This may be particularly the situation in negotiability cases and exceptions to arbitration awards. We certainly hope that as case precedent develop the percentage of new case filing will diminish to some extent--we are actually projecting a leveling off of negotiability filings. There is, however, no basis for predicting a decrease in caseload. The new law permits a greatly expanded use of grievance arbitration. We expect that as more grievances go to arbitration more exceptions will come to the Authority. As to unfair labor practice cases, the initial influx of case filings has been substantial in view of the newness of the program and the absence of precedent, and because under the Statute the General Counsel now bears the burden and expenses of investigating, prosecuting, and litigating unfair labor practice cases. It is expected that as case precedent is developed the percentage increase of new case filings will diminish to some extent. However, case filings will probably continue to rise in the future in proportions similar to those in the private sector to test new issues and probe broader parameters of the Statute.

Field Operations

How much of the requested increase is for field operations?

Please list and describe how much of the increase is for each of the field offices.

Of the additional positions sought, our projection calls for 42 of those to be assigned to field operations.

Our current plans are to put 38 positions into the Regional Offices and 4 handling appeals of Regional Director dismissals. The actual assignment of positions to the field offices will be made at a later date on the basis of caseload distribution.

A recent GAO Report states that your field structure currently consists of 9 regional and 3 sub-regional offices. Based on your first year's experience with the number and geographic distribution of case filings, do you plan any reevaluation of your current regional structure?

The regional structure is constantly under scrutiny and we have made modifications. We have closed the office in Norfolk and in the process of closing the Seattle office. Both changes being primarily based on the lack of sufficient caseload in the immediate area and the ability to more efficienty handle that caseload from other offices. Additionally, we plan to open a subregional office in Hawaii, and we are considering opening subregional offices in Panama and San Antonio because of caseload in those areas.

Time Standards for Processing Cases

GAO's recently issued report on the Authority states that you are planning to implement time limits for various stages of case processing in order to speed up decisionmaking. Could you tell us how long it currently takes, on the average, for decisions on negotiability cases and arbitration awards, and whether you are satisfied with these time frames?

What, if any, future improvements do you anticipate in case processing?

Are you satisfied with the current productivity rate of the FLRA staff? If not, what actions are you taking, or plan to take, to improve the productivity, efficiency, and effectiveness of your staff resources?

In October 1979 the General Counsel of the Authority instituted interim time targets for the processing of unfair labor practice cases in the regional offices. The established time target for a regional office decision in unfair labor practice cases is 60 days after the filing of the charge; the target for implementing a decision in a case found to have merit--that is, issuing a complaint in the absence of a settlement, is 75 days. Any case on hand at the end of each month, without a regional office decision, in excess of these time targets is considered "overage."

The institution of these time targets has had a dramatic effect on the reduction of overage cases in the regional offices. Thus, at the time the time targets were instituted in October 1979, there were 1014 pending unfair labor practice cases in "overage" status. As of the end of March 1980, the total number of unfair labor practice overage cases had been reduced more than half, to a total of 444 cases. Further, in 7 of the 9 regional offices the 60 day time target was being met in substantially all pending cases. It is hoped that beginning in October 1980, the interim time targets in the regional offices will be reduced to reach the NLRB time targets of 30 to 45 days to dispositive action. The availability of additional resources, of permanent space, and other considerations will affect this decision.

With respect to our current time-frames, the median age of the negotiability cases now before the Authority is approximately 5 months from the date the case was ready for processing and for arbitration cases, approximately 4 months. We do not regard the time delays as acceptable because we recognize such delays frustrate accomplishing the purposes sought to be achieved by Congress in adopting the Statute. In fact these figures are a substantial improvement in the situation which existed a few months ago when, for example, the median age of the negotiability case we were issuing was approximately 10 months from the date the case was ready for processing. We are certainly not resting on our improvements to date. Our goal is to get cases out on an average of 3 months from the date the case is ready for processing. Of course our ability to reach that goal is dependent both on our internal procedures and having necessary resources to meet the unexpected "explosion" in case filings during our first year of operations.

With respect to our productivity, we quickly realized that the mechanisms carried over from previous operations were not flexible enough to deal with the workload of the new statutory program. To provide that flexibility we created a division of case handling with an SES Chief Counsel to head the division. To provide specialized subject matter expertise, the Chief Counsel has an Associate Chief for each of the three major categories of case before the Authority. We then commenced moving toward a system where all line supervisors and staff are generalists, to be capable of handling any kind of case before the Authority.

As to the system of case handling, we have developed a number of expedited case handling mechanisms. For example, to the extent possible, we have eliminated written presentation by the staff, which would be terribly time consuming, and replaced them with oral presentations where the Members have previously had the case papers for review. In other appropriate cases draft decisions are submitted in lieu of an oral presentation. We have already seen that these organizational and procedural changes shorten, dramatically, case handling, without any loss in quality.

Difficulty Experienced in Obtaining Adequate Space

GAO's report recounts many of the problems your agency has had in obtaining adequate office space. What is the current situation regarding space at your headquarters and regional offices?

Following is a complete chronology showing where we are and how we get where we are, with regard to space:

Headquarters

October 5, 1978: The Federal Labor Relations Authority (FLRA) submitted a Form 81 to GSA requesting space for FLRA's headquarters. This request was submitted because President Carter's Reorganization Plan was anticipated and it was hoped that this would facilitate the new agency becoming operational as smoothly as possible.

March of 1979: The FLRA approved specifications for inclusion in a space solicitation by GSA. We were not informed by GSA of any responses to the solicitation.

April 11, 1979: GSA orally offered FLRA space in the 1726 M Street building with blocks of space to become available in phases beginning in August 1979.

May 5, 1979: FLRA formally accepted this space but was informed that the first block of space would not be available until November 1979.

May 21, 1979: FLRA advised that the formal letter of offer on the space was before the GSA Regional Administrator for signature.

July 2, 1979: GSA advised FLRA that the GSA Regional Administrator would not sign the letter of offer. Attempts by FLRA to contact the GSA Regional Administrator were unsuccessful.

August 7, 1979: A GSA representative advised FLRA that 1726 M Street would be vacant in mid-March 1980 and that a confirming letter should be received by FLRA on August 13, 1979.

August 1979: FLRA was informed, in response to numerous requests, that it would not be given independent leasing authority but that the M Street space would be available on April 1, 1980. FLRA indeed received a letter from GSA headquarters stating the M Street property should be occupied by FLRA by April 1980.

November 1979: Because of the delay in having space made available and because of the crowded conditions, FLRA asked for some "fast track" temporary space. Such space was to be made available relatively quickly and would be utilized only until permanent space was available for occupancy. GSA has just offered FLRA some such "fast track" space which we are in the process of evaluating.

Latter 1979 and early 1980: FLRA representatives had many, often frustrating meetings with GSA representatives seeking to get space designs approved for the M Street building. GSA at first approved parts of the space designs and then changed its position and disapproved them. In January 1980, FLRA was advised DOE would vacate M Street by June 1, 1980.

February 22, 1980: Received a letter from GSA Administrator Freeman advising FLRA that the completion date for the M Street alterations was December 19, 1980.

April 10, 1980: Finally, after more long and frustrating negotiations, FLRA's space design for M Street was approved and FLRA received a letter from GSA Regional Administrator moving the completion date for the M Street space up to October 15, 1980.

April 18, 1980: By letter the GSA Regional Administrator informed FLRA that the M Street space had been given to the Council on Wage and Price Stability. FLRA was advised, some one year and seven months after it first asked GSA for space, that no space was designated for FLRA and that GSA did not have sufficient space in its inventory to meet FLRA's requirements and that the only route left was to prepare a prospectus for Congress requesting permission to seek and lease space. This very time-consuming procedure is being pursued as rapidly as possible.

As the foregoing indicates, GSA has been neither effective nor particularly cooperative in securing us space either for our Headquarters or our Regional Offices. We are quite frustrated and the Authority finds itself with no Regional space in many cities and just starting to submit a prospectus to secure Headquarters space.

Regional

Boston: After more than 1 year since our initial request for permanent space, GSA has offered and we have accepted suitable space. We have submitted proposed floor plans to GSA and they advise that renovations should take approximately 60 days.

New York: In September 1979, after GSA's repeated inability to locate either permanent or temporary space, we were forced to rent rooms in the Holiday Inn so as to function. We continued to rent these rooms at $40/day until January 1980 when GSA located temporary space (which we are still occupying and which is totally inadequate) in 26 Federal Plaza. GSA entered into negotiations for permanent space sometime in February 1980. Those negotiations continued until late April when GSA informed us that they were terminating discussions with the prospective lessor because of non-agreement over costs. As of this date, GSA has no possible space for us and we are no better off than we were over 1 year ago.

Washington: Our request for permanent space has been pending at GSA for well over 1 year. At one point in the Fall of 1979, GSA advised us that they would attempt to locate additional temporary space through their "fast track" method of leasing which could bypass the usual leasing requirements and could result in temporary overflow space of up to 5000 square feet. After months of prodding by FLRA, GSA never did use their so-called "fast track" authority to locate temporary space. In late April 1980, GSA offered us temporary space at 1133 15th St., N.W. and permanent space in Bethesda, Md. The permanent space is to be available in approximately 120 days.

Atlanta: This regional office has been located in permanent space since the Fall of 1979.

Chicago: Permanent space was offered by GSA in early 1980. We were advised by GSA that renovations of the space would require approximately 60 days after they award the necessary renovations contract. As of this time, GSA has not yet award a contract and we have no word as to when we might move.

Dallas: This regional office is still located in temporary space. GSA did, however, offer fully acceptable permanent space several months ago. The permanent space is partially occupied by another agency at this time and the space that they are scheduled to move into has been damaged by fire. GSA has advised us that we cannot move into the permanent space until Fall 1980 because the current occupants of our space will not move until that time. We have suggested that GSA move the other agency into the temporary space that we now occupy so that we can move to our permanent space. We felt that this would be an equitable solution to our problem but GSA has refused to consider this recommendation. At this present time we have no word from GSA as to even an approximate move date.

Kansas City: This regional office is located in permanent space.

Los Angeles: This regional office moved into permanent, but unrenovated space in the Fall of 1979. At the time of the move, we were advised by GSA that renovations would take approximately 90 days after awarding of a contract. As of this time, GSA has not yet awarded a contract for the necessary renovations. We have no estimate from GSA as to when we can expect the work to commence. The physical space situation (without renovations) has created an unsecurable office and we have already been the victim of a theft of several thousand dollars worth of equipment.

San Francisco: This regional office is still located in temporary space. After waiting for GSA to initiate acquisition efforts we located, on our own, suitable space in San Francisco. When this space was brought to GSA's attention in the Fall of 1979 we were advised that it looked like a good possibility because no other space was available. Since that time, GSA has advised us that the space did not meet their "seismic standards" and could not be leased. At one point, GSA advised that those standards could be waived and that they would do so with our concurrence. Several weeks after that advise GSA told us that they would not waive the standard. At another point, GSA was negotiating for space and advised us that if it were leased we would have the first option on it. We were then advised that it was leased and given to another agency. As of this time, we have no word from GSA as to whether anything is available or when we might expect to secure permanent space.

Philadelphia: This resident office is currently in two blocks of temporary space and GSA is currently attempting to secure permanent space.

Cleveland: This office consists of 3 employees and GSA has not yet been able to secure permanent space. We had, on our own, located suitable space and by the time that GSA acted on the possibility the cost of the space had gone up at least 10%. As of this time we have no offer from GSA.

Denver: This resident office is currently located in totally inadequate temporary space. After months of prodding and looking, GSA has offered permanent space which we have accepted. We are advised by GSA that necessary renovations will take approximately 60 days.

Efficiency of Procedures

Have the process and procedures followed by the agency ever been reviewed by the Administrative Conference of the U.S.? If so, what recommendations has the Conference made to improve the operations of the agency?

With respect to the processes and procedures of the Authority, many of these, including certain time limits, were set forth in the Statute. Similarly, in areas of the Statute which were patterned after the National Labor Relations Act, we have adopted similar procedures to those of the NLRB. The Administrative Conference has never reviewed our processes and procedures.

Need for Additional Administrative Law Judges

GAO's report discusses your office of Administrative Law Judges and notes that potentially, an inadequate number of ALJ's may create a serious bottleneck in timely case processing. Is there currently a bottleneck of cases at this level?

How many ALJ's would be required to prevent such a bottleneck?

Have you recently requested more ALJ's from the Office of Personnel Management and, if so, what has been their response?

The GAO Report also suggests that you could take some independent actions that may improve the effectiveness of your current complement of ALJ's. What efforts, if any, has the Authority made in this regard?

There is no bottleneck at this moment, but the potential noted by GAO is close to realization. We have postponed that prospect with a far more successful settlement program than we anticipated. This has enabled the ALJ's, on the average, to dispose of cases at the rate of 33 cases per year since October, and with further improvement, will hopefully enable them to dispose of 40 cases per year. However, we presently have 283 cases scheduled for hearing, or 28 per ALJ, and in addition, 50 cases which have been heard and require written decisions. Thus, absent an extraordinary gain in the rate of settlement, a bottleneck will develop in the very near future.

Our present ALJ complement is 10. We anticipate 730 cases referred for hearing in FY 1981. If ALJ productivity can be increased to 38 cases per year, 19 would be required to handle that caseload in reasonably timely fashion. Fifteen would be needed for the approximately 600 cases projected for this year.

On October 16, then Acting Director Joyce Evans responded to our requests for additional Judges made on August 14 and October 5. She expressed the view that our actual experience under the Statute was too slight (a General Counsel having been appointed on August 1) to make reliable projections of the hearing burden. She therefore assigned us two GS-16 positions, inviting reapplication when we had a larger and more reliable statistical base from which to project our needs. She also indicated that it might not be possible to assign the number of Judges needed, and suggested that we explore the feasibility of accepting ALJs from other agencies on detail and of hiring law clerks to improve the production of Judges.

GAO suggested that law clerks and/or student assistants might be employed to alleviate the problem. Thus far, given the constraints on the number of personnel, we have not sought to hire clerks/assistants in place of ALJs. Either category occupies a slot, and an ALJ is far more productive. So long as personnel ceilings are of utmost consequence, effective use of manpower means that Judges should be hired if possible. If we receive our space allocations, of course we will utilize law clerks.

Attached is a letter from Chairman Haughton to Mr. Marvin Morse, Director, Office of Administrative Law Judges, Office of Personnel Management, requesting more ALJ positions. We have not yet received a response.

Attachment

May 5, 1980

Marvin Morse, Director
Office of Administrative Law Judges
Office of Personnel Management

Dear Mr. Morse:

On October 16, 1979, then Acting Director Joyce Evans replied to our request for the assignment of additional Administrative Law Judges to the Federal Labor Relations Authority. She made available two Judges, and, understandably, invited us to reapply after we had a broader and more reliable experience base under the new Federal Service Labor-Management Relations Statute. At the time of our request of August 14, the General Counsel (prosecutor) of the Authority had been in office for two weeks, and almost all our experience had been limited to cases processed under Executive Order 11491, the predecessor to the Statute.

Six months have passed since her assessment was made. Our Budget projections, presented to the House, predict 527 and 546 cases will be referred for hearing in 1980 and 1981. Through the end of March we have actually received 299 cases on the following curve:

October	22
November	28
December	42
January	60
February	64
March	83

This averages 50 per month; but that figure of course, does not take full account of the upward curve. We conservatively assume 70 per month, will be filled and thus we expect 630 cases per year. With our present complement of ten ALJ's this would require 63 dispositions per year to stay current, an unattainable goal. If productivity reaches 38 cases per year (the figure presented with the 1981 budget) 17 ALJ's would be required. As of April 23, we had 189 cases scheduled for hearing (into August) and a backlog of 50 pending decisions. We have clearly reached the point where backlog can be expected to quickly develop.

Out of an abundance of caution and a deep desire not to overcommit, as well as the hope that our settlement rate can be improved, I request that you authorize the assignment of seven more GS-16 ALJ positions to this Agency. In this regard I refer you to the letter of February 22, 1980, from OPM Director Campbell to Mr. Hy Kruger, Federal Personnel and Compensation for GAO in which Director Campbell assured Mr. Kruger that if the need were demonstrated we would received additional ALJ positions. I shall be happy to discuss this matter with you at your convenience.

Yours truly,

Ronald W. Haughton

Ronald W. Haughton
Chairman

Relations With the Merit Systems Protection Board

We are aware that the FLRA has established an informal working relationship with the MSPB to deal with questions and problems that might arise in overlaps in your respective jurisdictions.

Have any problems surfaced and what is the current relationship between you and the MSPB?

Our relations with MSPB have been constructive and no problems have surfaced. In fact, the relationship has been formalized to the extent that specific persons in each agency have been designated as contact persons for liaison purposes and these contacts have already been used by each agency to keep the other aware of matters believed to be of mutual concern and interest. We view the informal working relationship between the Authority and MSPB to be working smoothly and are confident we can deal with any matters that might arise.

Significant Areas of Workload Growth

The agency's workload appears to be growing most rapidly in four areas:

Federal Service Impasses Panel cases projected to be up to 151% in 1981;

Arbitration appeals are projected to be up 100% in fiscal year 1981;

Representation appeals are projected to be up 77% next year; and

Negotiability appeals are projected to be up 20%.

For each of these areas of projected increase please provide the following information:

What are the authorities and services provided by the agency?

To what extent did these authorities exist in the Executive Order that gave the agency its authority prior to the passage of the Civil Service Reform Act of 1978?

Why is the workload expected to increase so remarkably in each of these categories?

Section 7119 of the Federal Service Labor-Management Relations Statute is the source of the Panel's authority. This section directs the Panel to assist agencies and unions in resolving their bargaining disputes. Moreover, it authorizes the Panel to employ whatever methods or procedures it considers appropriate for the resolution of impasses. The emphasis in the Statute and in the Panel's procedures is on the attainment of voluntary settlements. To this end, the Panel uses a variety of dispute resolution techniques such as factfinding (both with and without recommendations), "med-arb", and written submissions in lieu of factfinding. If a voluntary settlement is not forthcoming, or in other appropriate situations, the Panel may resort to other techniques such as a directed settlement or interest arbitration to bring the dispute to an end through final and binding action.

The Panel's function and authority have remained essentially intact in the transition from the Executive Order to the Statute. Under section 17 of Executive Order 11491, as amended, the Panel was authorized to recommend procedures for the settlement of impasses or to resolve them by other appropriate action. Section 7119 of the Statute, while it employs different terms, likewise authorizes the Panel to assist the parties in the resolution of bargaining disputes and to employ whatever action is necessary and appropriate to this end. The Statute makes it very clear, however, that the final step of this procedure is equivalent to interest arbitration, with enforcement of decisions to be through the unfair labor practice procedures.

There are several reasons for an expected increased in the Panel's caseload. One of the purposes of the Federal Labor Management-Relations Statute was to broaden the scope of bargaining. To the extent that this occurs (and we are already observing it in the Authority's decisions), bargaining will become more substantive. With more at stake in negotiations, the parties may be less willing to compromise. Another factor is the increased sophistication of the parties. In earlier years neither agencies nor unions were fully cognizant of their respective rights and obligations. Consequently, much of the bargaining was superficial and ill-planned. With experience derived from numerous sets of negotiations, however, agency and union representatives are now coming to the table with definite and well-conceived goals. Unless at least some of their respective expectations are obtained, neither party will be willing to enter into an agreement. More liberal authorization of official time under the Statute is likely to increase the amount of mid-term and end-of-contract negotiations. This will give rise to a large number of impasses. Finally, the past success of the Panel is likely to generate future requests for assistance. While the Panel has not been immune from criticism, there appears to be a general consensus among the parties that our functions have been performed well.

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Section 7105(a)(2)(H) of this Statute empowers the Authority to resolve exceptions to arbitrator's award under section 7122 of the Statute. With respect to arbitration appeals, the Authority, like the Federal Labor Relations Council under the Executive Order program, is responsible for resolving exceptions to arbitration award which may be filed by either party to arbitration. However, it is not a change in the service provided which will result in the large increase in the number of cases. The increase results from the changes brought about by the Statute in significantly increasing the permitted scope of negotiated grievance procedures and thus the matters which may be submitted to arbitration for resolution. The Statute provides that any grievance not satifactorily resolved under the negotiated grievance procedures shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency (See 5 USCA § 7121(b)(3)(C)). The use of binding arbitration was not required under the Executive Order. The Statute further provides that all negotiated grievance procedures must provide for the resolution of questions of arbitrability. (See 5 USCA § 7121(a)(1)). These questions will generally be submitted to arbitration. Under the Executive Order they were generally submitted to an Assistant Secretary of Labor for resolution.

Under the Executive Order the coverage and scope of the negotiated grievance procedure could not include matters for which statutory appeals procedures exist. Under the Statute this constraint does not exist. The Statute specifically excludes only five matters from coverage by a grievance procedure (See 5 USCA § 7121(c)). Otherwise, unless excluded by the parties during negotiations all matters that under the provisions of law could be submitted to a grievance procedure are within the scope of the negotiated grievance procedure and thus subject to arbitration. Thus many matters which could not previously be submitted to arbitration will now be subject to arbitration, such as questions involving reductions-in-force, withholding of within grade increases; and Fair Labor Standards Act questions. Therefore, there will be a significantly larger number of arbitrations in the Federal sector under the Statute and therefore, even assuming the rate of appeals from awards remains constant (approximately 17% of all arbitrations under the Executive Order were appealed to the

Council), there will be a correspondingly larger number of appeals to the Authority. Moreover, it would appear that initially, at least, the rate of appeals will rise significantly. Thus the parties will not only appeal more frequently from awards on the merits in matters that are being arbitrated for the first time, but we anticipate a significant number of appeals from arbitrability determinations, primarily in questions as to whether or not a particular matter is covered by one of the exclusions in §7121(c).

Pursuant to section 7105(a)(2), the Authority determines the appropriateness of units for labor organization representation. With respect to these representation cases, again the Authority is performing essentially the same task as done by the Assistant Secretary of Labor under the Executive Order program, that is, primarily making determinations as to appropriate units. We do not anticipate any significant growth in representational case activity. For FY 81, we only project a 3.6 percent increase in the number of appeals over the FY 80 projection. Adding in carryover, we project a 34 percent increase in total caseload for FY 81. Our projection for increased representational caseload is primarily from the impact of the statutory charter for the consolidation of existing units.

Sections 7105(a)(2)(E) provides that the Authority resolves issues relating to the duty to bargain and 7105(a)(2)(D) provides for the resolution of issues relating to determining compelling need for agency rules or regulations under section 7117(c). These are the basis for the processing of negotiability appeals.

As to those negotiability appeals, again the function and service provided by the FLRA is not different from that performed by the FLRC under the Executive Order program. The Authority resolves issues as to whether proposals are negotiable. We projected very dramtic increases in negotiability caseload for FY 80 and we have in fact experienced those increases. These increases result from our public need to seek guidance of the parameters of the statutory scope of bargaining. We anticipate that the number of filing will level off in FY 81. We are projecting no increase in the number of filings, but because of carryover, we are projecting an increase in total workload of approximately 16 percent. Of course the carryover figures are dependent on receiving the requested staff. If we do not we will reach much higher carryover levels, resulting in large numbers of labor-management relations issues going unresolved.

Unfair Labor Practice Cases Investigated

The agency estimates that it will investigate approximately 4,056 alleged cases of unfair labor practices in FY 1981 or an increase of approximately 42%. Why is this activity increasing so rapidly?

The substantial increase in unfair labor practice case investigations in FY 1981 will result from several factors.

1) The staff hired in FY 1980 will be available for an entire staff year in FY 1981. This contrasts sharply with our experience in FY 80 when many vacancies existed and many new hires occurred during the course of the Fiscal Year.

2) Twenty five new positions are requested to fulfill unfair labor practice investigative responsibilities in FY 1981. We estimate that these new positions will be available for three-forths

of the Fiscal Year thereby substantially augmenting our investigative capability.

3) In FY 1981, the staff hired in FY 80 will have attained one year of investigative experience. This work experience, plus the training which has been provided during the course of FY 80, will enable the staff to increase their productivity by at least five percent.

4) Management improvements in case processing will result in increased productivity. In FY 1981, having a more experienced staff, it is anticipated that the time objectives for investigations of unfair labor practice charges will be lowered. This will enable us to complete unfair labor practice investigations in shorter periods of time, process more cases, and provide the clientele with expeditious dispositive actions at the Regional Office level.

Furniture

How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget request?

Since the Authority's creation in 1979, we have been opening and staffing our Regional and subregional offices. We have been greatly delayed in these efforts by lack of resources and unavailability of space. As you know, we have yet to get space for the National office.

For FY 1980 it was originally estimated that $463,000 would be spent for equipment and furniture. Because of our space and budget situation we now project that $289,000 will be obligated this fiscal year. It is estimated that $220,000 will be needed for equipment and furniture in FY 81. These funds will be necessary for furniture and equipment for our new offices that we will be occupying during FY 81.

Fiscal Year 1980 Supplemental

FLRA has requested language to permit the agency to spend $750,000 on travel in fiscal year 1980 as opposed to the $445,000 previously approved. What changes in program activities explain the need to reestimate the funds necessary to finance travel?

The mission of the FLRA is to resolve labor-management relations cases arising under the Statute. That is, cases arising between Federal agencies, Federal employees and the labor organizations representing Federal employees at Federal facilities around the world. The largest single activity that we engage in is the investigation of unfair labor practice complaints, which involve our field employees going to the site of an alleged member labor practice and conducting an investigation. If the case goes to hearing, one of our field attorneys goes to the site of the case and prosecutes the case before one of our Administrative Law Judges. When cases involve judicial review or enforcement, our Solicitor's Office goes to the appropriate court to represent us. Similarly, where collective bargaining impasses develop, the Federal Service Impasses Panel, the substitute for the strike, goes out to do factfinding, all of those activities require travel.

The need for the requested increase results from the fact that the FY 80 budget was prepared prior to the passage of the Civil Service Reform Act and under the explicit direction that case filing estimates be based on experience under Executive Order 11491, which preceded the Federal Service Labor-Management Relations Statute. Under that guidance, we estimated processing 1,168 unfair labor practice cases. This category is the largest single workload area in the Authority, and is accomplished by FLRA investigators interviewing persons involved, or having knowledge of, the alleged unfair labor practice case. In fact, it is now estimated 2,850 unfair labor practice dispositions in FY 80 will be accomplished. Our other caseload areas reflect the same level of increases, percentage-wise. The effect of the Statutory additions or changes to the program has increased cases requiring travel by over 100 percent. Without resources to travel, cases will not be processed, backlogs will increase from the current substantially, with no cases requiring travel being processed in the fourth quarter of FY 80.

The effect of no increase in limitation will be that travel resources will be completely expended by June 15, 1980. Virtually all case-handling activities of the General Counsel will cease at that time. The settlement of labor disputes, not already investigated, between agencies and unions, therefore, would also cease at that time. This will mean that the FLRA will not be able to settle disputes in a fair and expeditious manner, that unions and agencies will have festering differences unable to be resolved, that backlogs will increase to totally unacceptable proportions, and that a substantial long-term backlog situation will have developed. Further it will result in a waste of federal funds because staff would, by necessity, be under-utilized because they could not investigate cases, which necessarily involves travel.

FLRA has requested $570,000 for the effect in 1980 of the October 1979 pay raise. What portion of the total requirement is the agency absorbing in fiscal year 1980?

The total requirement for the October 1979 pay raise is $668,450 and the agency is absorbing $98,450. However, if the House Subcommittee's recommendations are approved, an additional $70,000 will be required to be absorbed, for a total of $168,450. We are planning to absorb the $98,450 through delays in hiring. However, the additional $70,000 reduction being considered by the House would create serious operational difficulties for the Authority, including a freeze on the limited hiring we would otherwise do, eliminating our summer hire program, and, inevitably, an increase in backlogs. We respectfully request your assistance in approving the full $570,000 pay raise supplemental, so that we may avoid these serious difficulties.

U.S. TAX COURT

STATEMENT OF HON. C. MOXLEY FEATHERSTON, CHIEF JUDGE, U.S. TAX COURT

ACCOMPANIED BY:
CHARLES CASAZZA, CLERK
DONALD BAXTER, BUDGET OFFICER

BUDGET REQUEST

Senator DECONCINI. The committee will now receive testimony from the U.S. Tax Court regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental. $10,427,000 and 226 permanent positions have been requested for fiscal year 1981. For the fiscal 1980 supplemental, $360,000 has been requested, and the fiscal year 1980 supplemental also includes a request for increase of statutory limits on travel expenses.

The committee is pleased to have Judge Featherston with us today to present the testimony in support of these requests.

PREPARED STATEMENT

Judge Featherston, your testimony in full will be printed in the record, and if you will highlight that for us. Please introduce your colleagues.

[The statement follows:]

STATEMENT OF CHIEF JUDGE C. MOXLEY FEATHERSTON

I appreciate the opportunity to appear before this Committee and present the United States Tax Court's appropriation request for the fiscal year 1981 and the Court's supplemental funding requirements for the fiscal year 1980.

1980 SUPPLEMENTAL FUNDING

Last September, Congress approved our $9,391,000 fiscal year 1980 appropriation request. That request, however, did not include funds to cover the pay increase granted to employees in October 1979. These added costs presented in the January budget submission amount to $360,000 for the fiscal year 1980. In years past, the Court has been able to absorb a substantial part of the annual pay-increase costs, but the level of our expenditures indicates we will not be able to do so during the current year.

A later supplemental request making available an additional $46,000 for travel expenses is contained in House Document No. 96-294 submitted by the President on April 15, 1980. This request does not affect the amount of the appropriation.

Present calculations indicate that the Court's authorized travel funds of $254,000 will be almost depleted by June 30, the end of the Court's spring term. Very little travel money will be available to conduct special sessions during July and August or to finance travel required for the first month of our fall term which begins in September.

This situation developed because the base year 1978 on which our fiscal year 1980 travel requirements were estimated was a period of declining air fares, and as a result our estimate was low. Since that time air fares have been deregulated and oil prices, which affect air fares, have skyrocketed. Air fares increased nearly 30 percent in the calendar year 1979 alone. In addition, GSA has expanded the number of cities which qualify for higher per diem rates, and as a result traveler subsistence costs have increased.

The travel which we perform is not discretionary. Virtually all of it is required to handle trial sessions at various locations throughout the United States. It will be necessary for the Court to have the requested relief if it is to discharge its responsibilities.

1981 BUDGET REQUEST

The total 1981 budget request as amended by House Document No. 96-294 is $10,427,000, or an increase of $676,000 over the 1980 requirement of $9,751,000 (including the currently-requested pay raise supplemental appropriation). This increase is needed for the following purposes:

1. $72,000 to provide a law clerk to assist each of five special trial judges.
2. $189,000 to cover the full year costs of positions filled in 1980 and a reduction in lapsed employment.
3. $147,000 to cover the full year cost of the October 1979 pay raise and promotions and step increases granted in 1980.
4. $37,000 for promotions and step increases less the savings accruing from one less compensable workday in 1981.
5. $25,000 to cover the commensurate increase of benefit costs.

Changes in object classifications other than personnel compensation and benefits are grouped as follows:

- Increases in rates fixed by other agencies for rent, printing, and telephone service ($56,000);
- Increases over the 1980 base for travel, transportation, and court reporting requirements occasioned by a deficiency in the 1980 budget plus additional trial sessions ($47,000);
- The cost of new courtroom facilities and associated telephone services acquired in 1981 plus the annualization of such costs for 1980 acquisitions ($58,000);
- An 8.3 percent inflation factor applied generally to other than Federal pay costs reflecting guidance furnished by the Office of Management and Budget ($85,000);
- An additional 22 percent increase in the cost of air fares assuming that these prices will continue to escalate above the overall inflation rate ($30,000); and

- An offset of $70,000 against all the above increases due to nonrecurring items.

WORKLOAD

To explain the need for the five additional law clerks, it is necessary to review briefly the explosion in litigation that we are continuing to face. In fiscal year 1979, the Court received 17,126 new cases, disposed of 13,382, and wrote 1,438 opinions. These figures reflect an unabated increase in work. Since fiscal year 1974, the number of new cases has grown by 96 percent, closings by 50 percent, and written opinions by 62 percent.

As a result of the increased filings, we entered fiscal year 1980 with the largest caseload in the Court's 56-year history. On September 30, 1979, we had 27,043 pending cases involving $3,986,106,010 in asserted deficiencies.

While forecasts of the Court's future workload have always been difficult and often understated, a continuing upward trend in receipts is indicated: annual increases have amounted to an 11-percent average over the past 10 years, 14 percent over the last 5 years, and 13 percent over the most recent 3-year stretch. Our estimates of fiscal year 1980 (18,300 new cases) and fiscal year 1981 (19,600 new cases) receipts reflects our judgment that the filing rate will continue to rise but at a lower rate than in recent years. This judgment is premised on (1) the increase from 6 percent to 12 percent in the interest payable on deficiences affective in February 1980; (2) an indicated reduction in the Internal Revenue Service audit rate to a percentage below the 1975 level; and (3) an Internal Revenue Service statement that there has been a proportionate increase in the number of income tax returns in which standard rather than itemized deductions were claimed.

At this point, our judgment that the rate of increased filings will ease somewhat in 1980 and 1981 is tempered by the fact that as of April 1, 1980, the number of new cases filed during the current fiscal year is greater by 974 than during the same period in fiscal year 1979. Moreover, recent public statements by officials of the

Internal Revenue Service indicate the Service plans to issue literally thousands of notices of deficiency in the so-called tax shelter cases. If these plans materialize, our forecast of future filings will be low.

WORK OF SPECIAL TRIAL JUDGES

The special trial judges for whom we propose to employ five additional law clerks play an important part in our efforts to carry our growing workload. First, they handle practically all of the "small tax cases." You may recall that Code section 7463 permits taxpayers at their option to petition the Tax Court for a redetermination of income, estate, and gift taxes and have their cases heard under expeditious and simplified procedures. Trials of these cases are conducted as informally as possible consistent with orderly handling. The rules of evidence are relaxed, neither party is required to file a brief, and neither party may appeal. Effective June 1, 1979, Public Law 95-600 raised the statutory limit of these cases from $1,500 to $5,000. During the fiscal year 1979 the election of the small tax case procedures were made in 6,028 cases, an increase of some 40 percent over the 4,316 cases in which the election was made in fiscal year 1978. During the fiscal year 1979, 704 opinions were written in these small tax cases. The cases closed by opinions plus the ones closed by settlement or other procedures brought the total small tax case closings to 4,796.

Second, we have continued to use the special trial judges to handle the so-called General Order No. 6 cases. In general terms these are cases filed by taxpayers who do not have attorneys to represent them and who signify that they have no objection to having their cases heard by special trial judges rather than one of the regular judges. Initially, we used the General Order No. 6 procedure almost exclusively in the larger cities, mainly Los Angeles, San Francisco, and New York but have now extended it to some of the other cities. During the fiscal year 1979, the special trial judges wrote 62 opinions in General Order No. 6 cases.

Third, the special trial judges are hearing an increasing number of the large cases requiring protracted trials. Some of these trials last several weeks. Preparation of the findings of fact and opinions in these cases require a great deal of time and extensive research.

The increase in the jurisdictional limit for the small tax cases, the expansion of the General Order No. 6 assignments, and the additional protracted trial work have all contributed to greater complexity in the issues which the special trial judges are called upon to decide. To handle this work, the ten special trial judges are currently conducting approximately 180 trial sessions per year. An opinion is required in almost every case they hear. Five of the special trial judges now have law clerks assigned to them. To assist the other five special trial judges in the preparation of opinions in the cases they hear, we are requesting funds for five additional law clerks.

PENDING REQUEST FOR ADDITIONAL JUDGES

I think I should inform the Committee at this time that the Tax Court has requested the Congress to authorize the appointment of three additional regular judges. This request for three additional judges would bring the total number to 19. It is the first increase in the number of regular judges since 1926.

The Court has reluctantly concluded that it must have this additional help if it is to carry the mounting workload efficiently. You may recall that the Crude Oil Windfall Profit Tax Act as passed by the Senate provided for three additional Tax Court Judges. This provision was stricken in Conference, but the Chairman of the House Ways and Means Committee authorized hearings on the need for the additional judges. The hearings were held on April 1, 1980. Thus far, the Ways and Means Committee has not taken action on the Court's request. If the request is granted the Court will find it necessary to request a supplemental appropriation to provide for the three additional judges and their staffs.

SUMMARY

In summary, the Tax Court has had a busy year. The volume of litigation continues to grow. In the fiscal year 1979, we received more new cases, closed more cases, and wrote more opinions than in any one of the last 50 years. The Court has an extremely large number of pending cases. We have reached the point where the five special trial judges who do not have law clerks at this time need some assistance in researching and managing their work. For this reason we are requesting the additional funds to employ five additional law clerks.

Judge Featherston. With me is Mr. Charles Casazza, the clerk of the court, and also Mr. Donald Baxter of our Budget and Finance Office.

We are pleased to have this opportunity to discuss with the committee our needs for fiscal year 1981. You have correctly described our request.

There are three items which I think perhaps I need to call to your attention.

INCREASED TRAVEL EXPENSES

First, we are requesting the Congress to lift the ceiling on travel funds for fiscal year 1980 from $254,000 to $300,000. This is an addition of $46,000. The court will be able to absorb that amount from the appropriation which is now available, and so no new money is required.

In preparing our budget request for 1980, we estimated our travel costs at $254,000. You may recall that under one of the general provisions of our appropriation act we are limited to that amount in paying our travel costs. We prepared our estimate in the fall of 1978 when airfares were going down. Unexpectedly, during the calendar year 1979, airfares alone increased by 30 percent. In addition, the General Services Administration has expanded the list of cities at which travelers qualify for the higher subsistence rates. The result is our travel funds will be nearly exhausted by June 30, 1980. We will have insufficient travel funds for special trial sessions planned for the months of July and August, and we will have no funds for the month of September, which is the first month of our fall term.

I wish to emphasize that our travel is not discretionary. The statute says we are to hold court in those cities which are at places most convenient for taxpayers. That means it is necessary for our judges and the trial clerks to travel to those cities. We have submitted a request to OMB for revision of the $254,000 travel ceiling, and we understand it has been included in House Document No. 96-294.

In addition, we are requesting an amendment to our budget for 1981 to increase the travel authorization from $315,000 to $345,000 in line with these unanticipated higher travel expenses.

REQUIREMENT FOR FIVE NEW POSITIONS

The second item which I feel I should mention is that, with respect to our request for 1981, the increase which we have set forth and described in our statement, as you will note, involves such items as increased payments to other agencies, the travel item I have mentioned, and other items which are attributable primarily to inflation. The only new money that we are asking is $72,000 for five law clerks for our special trial judges. And I think the best way I can explain our need for these additional positions is to describe very briefly our workload situation.

During fiscal year 1979, we received 17,126 new cases. This was a 96-percent increase over 1974. In 1979, we closed 13,382 cases. This reflected a 50-percent increase over 1974. We wrote 1,438 opinions which was a 62-percent increase over 1974. At the end of fiscal year 1979 we had 27,043 spending cases, involving $3,986,106,010. In the justification material we have submitted, we have estimated we will have 18,300 new cases in fiscal year 1980, and some 16,000 in fiscal 1981. The information available at this point indicates our estimates are conservative. During the first 6 months of the current fiscal year we have received 974 more new cases than during the corresponding 6 months of last year.

To assist in handling this workload, we have depended heavily on special trial judges. These are judicial officers appointed by the court, referred to in the new statute as commissioners. Their work consists primarily of handling the small tax cases and hearing some of the regular cases. As you know, in the Revenue Act of 1978, the Congress raised the ceiling for the small tax cases to $5,000, with a result that the issues and problems which are being dealt with by special trial judges are more difficult and require more research. And it is for that reason we are asking for additional law clerks.

EXHAUSTING OF ADMINISTRATIVE REMEDIES

Senator DeConcini. Excuse me, what percentage of the cases received by the U.S. Tax Court represent cases where the individuals involved have exhausted the administrative remedies available to them at the Internal Revenue Service, do you know?

Judge Featherston. All the cases which are filed in the Tax Court, with the exception of so-called declaratory judgments, are cases which have gone through the Internal Revenue audit process.

Senator DeConcini. They have gone through the administrative process?

Judge Featherston. That is correct. But the Court has no information on the extent to which the taxpayers have attended all available conferences.

Senator DeConcini. What is that, 99 percent?

Judge Featherston. With respect to the declaratory judgments, the statute requires an exhaustion of administrative remedies as a condition to Tax Court jurisdiction.

EFFECT OF INCREASE IN INTEREST CHARGE

Senator DeConcini. Another question of interest to me, the IRS now is entitled or does charge 12 percent on moneys that are owed. Do you anticipate that that is going to reduce or decrease the number of cases filed?

Judge Featherston. Hopefully it will.

Senator DeConcini. When did that interest rate go up?

Judge Featherston. That went into effect February 1.

Senator DeConcini. So it is a little early to see.

Judge Featherston. Yes; it is hard to know, Mr. Chairman, just exactly what the effect will be. But hopefully that will reduce to some extent the workload of the court.

Senator DeConcini. I have had an opportunity to read your full statement, and I am very impressed with the workload of that court. I think a lot of people don't understand and appreciate just how busy the Tax Court is and what responsibility that you have. I will have a few more questions to be answered for the record.

Judge Featherston. Thank you, Mr. Chairman. We will be pleased to answer them.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

WHY NOT ASSIGN JUDGES TO MORE TRIAL TIME TO REDUCE BACKLOG

Question: The 15 Judges assigned to the Courts will have scheduled trial assignments for a total of 356 weeks or approximately 46% of the time available to all 15 Judges. In view of the growing backlog of cases, why isn't the Court planning to schedule more time of trial assignments for its Judges?

Answer: The Court is not planning to schedule any substantially greater amount of trial time for the present Judges because they need nontrial time to write opinions in the cases they have heard. Generally speaking, Tax Court cases involve complex factual and legal issues. The statutes require the Court to file a written report in every case it decides, and the report is to include findings of fact and an opinion or memorandum opinion. With the exception of the so-called small tax cases (heard almost exclusively by the Special Trial Judges), post-trial briefs are filed by the attorneys for the parties in almost every case. To decide these cases requires time for study of the trial record, research of the law, and careful writing of the opinions. The Court's decisions in many cases become precedents for the disposition of numerous similar cases. It is, therefore, important not only in the interest of the parties to the particular case but to the development of the tax law that the Court's opinions be well reasoned and well written. If the Court is to discharge its function of providing reliable precedents for the guidance of the tax bar and the tax administrators, adequate time for the Judges to prepare opinions must be preserved.

APPEALS PROCESS AND TAX CASES: TAX COURT VIS-A-VIS IRS

Question: What percentage of the cases received by the U.S. Tax Court represent cases where the individuals involved have exhausted the administrative remedies available to them at the Internal Revenue Service?

Answer: In every case involving deficiencies in income, estate, gift, and excise taxes brought in the Tax Court, the Internal Revenue Service has issued a notice of deficiency. The issuance of such a notice is a prerequisite to Tax Court jurisdiction and is usually preceded by conferences with a revenue agent and other Internal Revenue Service officials. In that sense the taxpayers have exhausted their administrative remedies. The Court has no knowledge, however, of the extent to which the taxpayers, prior to the issuance of such notices, have pursued all conference procedures available to them in the Internal Revenue Service. In declaratory judgment cases, the statute expressly requires a showing of exhaustion of administrative remedies.

Question: Are the number of individuals who appeal to the Tax Court prior to exhausting their administrative remedies at IRS increasing? If so, why?

Answer: As stated in the above answer, the Court has no knowledge of the extent to which litigants before the Tax Court have pursued all conference procedures available to them in the Internal Revenue Service.

Question: Do the Courts know in general whether or not the settlements provided by the Tax Court are more or less lenient than those provided by IRS administrative procedures:

Answer: The Tax Court has no knowledge of the amount recovered by the Government in cases disposed of administratively. In Tax Court cases settled by the parties, the Government in fiscal year 1979 recovered 24.9 percent of the determined deficiencies. All of these settlements of Tax Court cases were negotiated by Internal Revenue Service attorneys representing the Commissioner. In some cases the Tax Court Judges discussed settlement with the parties, either before or after the completion of the trials, but in most of the cases the settlements were worked out by the parties without the participation of the Tax Court Judges.

Question: Would it be advisable to require individuals to exhaust their appeal rights at IRS prior to entering a case with the U.S. Tax Court? If not, why not?

Answer: Whether individuals should be required to show an exhaustion of administrative remedies as a condition to their right to file a suit in the Tax Court is a controversial issue. The nature and character of the disputes between taxpayers and the Internal Revenue Service differ widely from case to case, and opinions among members of the Bar differ as to whether the results of compelling taxpayers to submit to a series of formalized administrative hearings would be constructive. The Tax Court has taken no position on the question, but we think a legislative proposal requiring the exhaustion of administrative remedies is one which, if considered, would require careful study.

IMPROVED ADMINISTRATIVE PROCEDURES

Question: Has the Administrative Conference of the United States examined the procedures of the U.S. Tax Court in an effort to identify ways to make it more efficient? If yes, what recommendations were made by the Administrative Conference and to what extent have the recommendations been implemented?

Answer: The Administrative Conference of the United States has not examined the procedures of the United States Tax Court. That organization has responsibility only for agencies within the executive branch of the Government. Since 1969, the Tax Court has not been an executive agency but rather a court of record established under Article I of the Constitution.

FURNITURE

Question: How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget request?

Answer: The 1981 budget request includes $60,000 for the purchase of furniture. None of the funds in the pending 1980 supplemental request are for the procurement of furniture; nor were any funds included in the original 1980 request for that purpose.

The $60,000 proposed for 1981 will cover the cost of outfitting three new field Court facilities to be assigned during that year.

Of the $20,000 to be allotted for each facility, approximately $15,000 will be required for the special construction and placement of a bench, the witness box, and the spectator's seating arrangement. The balance will be available for furnishing the Judge's chmaber, a conference area, and the Clerk's office.

FISCAL YEAR 1980 SUPPLEMENTAL

Question: The U.S. Tax Court has requested $360,000 in 1980 for the October 1979 pay raise. What percent of the total requirement has been absorbed?

Answer: None. This was the first time in recent years that the Court was unable to volunteer to defray the cost of general pay raises. The Court absorbed approximately 61 percent of such expenses between 1974 and 1979.

Question: Why couldn't the Court absorb the total increase in both fiscal year 1980 as well as its impact on the 1981 budget?

Answer: When the Court made its 1980 budget estimates in the summer of 1978, it made no allowance for future inflation. For that reason, there was no margin to permit us to carry the unanticipated increased costs due to inflation and to absorb the cost of the October 1979 pay raise. Since the budget was prepared, the Court has been accruing savings which will probably reach $140,000. These savings are attributable to delays in the assignment of out-of-town Court facilities, resulting in savings of $60,000 in rent; the unforeseen resignation of an active Judge, a turnover of two Special Trial Judge positions, and the death of a senior Judge, producing an $80,000 savings in salary expenses for the year. Of this $140,000, the amount of $46,000 will be needed to defray the cost of the Court's requested increase in travel funds, leaving $94,000 available to apply on the $360,000 supplemental request.

As indicated in the justification material submitted to the Committee, however, the Court has requested authorization for three additional presidentially-appointed Judges to carry the growing workload. Hearings were held by the House Ways and Means Committee on April 1, 1980, on this request. Depending on when one or more of these Judges are authorized and appointed, additional funds will be needed to defray the costs of their salary and staff.

The annual cost of the October 1979 pay raise in 1981 was estimated at $428,000. This expense will be increased by any increases recommended by the Commission on Executive, Legislative and Judicial Salaries which will convene in October.

In consideration of any such pay raise action and in anticipation of legislation authorizing three new judgeships, it is the Court's judgment at this time that the full 1981 pending request is needed.

PUBLIC WITNESSES

Senator DECONCINI. Mr. Arthur Sackler is the only public witness we are going to be able to have time to take today. The other public witnesses, if they return tomorrow morning at 10 o'clock, we will hear from them.

Mr. Sackler, if you have a prepared statement we will put it in the record, if you care to highlight it.

Mr. SACKLER. Senator, we very much appreciate your changing the schedule to accommodate our witness from out of town.

Senator DECONCINI. I have only about 2 or 3 minutes now. If you want to come back tomorrow, I will have more time. Would you rather do that?

Mr. SACKLER. Yes, we will be back tomorrow.

SUBCOMMITTEE RECESS

Senator DECONCINI. Fine. The subcommittee will stand in recess until tomorrow morning at 10 a.m. in this room.

[Whereupon, at 11:40 a.m., Tuesday, April 29, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, April 30.]

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

WEDNESDAY, APRIL 30, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:18 a.m., in room 1318, Everett McKinley Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Present: Senator DeConcini.

NONDEPARTMENTAL WITNESSES

NATIONAL NEWSPAPER ASSOCIATION AND AMERICAN NEWSPAPER PUBLISHERS

STATEMENT OF ARTHUR SACKLER, NATIONAL NEWSPAPER ASSOCIATION

ACCOMPANIED BY JOHN BISHOP, AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

PROCEDURE FOR HEARING PUBLIC WITNESSES

Senator DECONCINI. Good morning. The committee will come to order.

This morning the committee will continue receiving testimony from public witnesses. We will put the full statement of each witness in the record, and it is requested that each public witness provide the committee with an oral summary not to exceed 5 minutes. It will be necessary to keep to this time limitation in order for us to have time for questions and so we can hear all the witnesses who are scheduled to testify this morning.

Following the public witnesses, the committee will hear testimony from the Federal Election Commission, the Advisory Committee on Federal Pay, the Committee for Purchase from the Blind and other Severely Handicapped and the Administrative Conference of the United States regarding the fiscal year 1981 budget requests for these agencies. The 1981 requests for these agencies total $12,348,000 and the 1980 supplementals total $470,000.

We will also hear testimony this morning from officials from the State Department in support of the $88 million request for the U.S. contribution to the international buffer stock on rubber. This international buffer stock is proposed by the International Natural Rubber

Agreement of 1979 and was negotiated by the major rubber-producing and consuming nations of the world.

Our first witness will be Mr. Arthur Sackler from the National Newspaper Association, accompanied by Mr. John Bishop from the American Newspaper Publishers Association.

Gentlemen, sorry we were late. I was going to be here early, but we had votes. I will insert your full statement in the record.

[The statement follows:]

STATEMENT OF JOHN BISHOP

Good morning, Mr. Chairman, my name is John Bishop, General Manager of the Northeast Publishing Company, Presque Isle, Maine, and I represent the American Newspaper Publishers Association. With me this morning is Arthur B. Sackler, General Counsel to the National Newspaper Association. On behalf of our organizations, we appreciate the opportunity to discuss with you the proposals to severely reduce appropriations to the Postal Service.

As you know, ANPA is a national trade association whose more than 1370 member newspapers represent 90 percent of the daily newspaper circulation in the country. Many non-daily newspapers also are members.

NNA represents more than 500 daily newspapers in smaller cities and more than 5000 weekly newspapers throughout the United States.

NNA and ANPA support reasoned attempts to balance the budget. In fact, editorials in many newspapers across this country have urged moderation in government spending. The suggested Postal Service cuts however, have been made too hastily. The real impact upon the Postal Service, its patrons and the public has yet to receive careful consideration. We think the cut will spur inflation, encourage higher postal rates and poorer service, and deny many newspaper readers access to the information and news which is essential to a free society.

Historically, the Postal Service has been the one arm of the government visible to everyone--regardless of the size of their city or town--across the country. Its universal-delivery system has long been a cornerstone of our democratic process. For two hundred years, the people have recognized this, and provided for it with appropriation of public money. Now we are threatened with the first significant scale down of this system with no indication from the people that they no longer desire the service.

The ill effects of a delivery cutback will be substantial:

mail users will be forced into alternative delivery systems on days the Postal Service is unavailable; those subject to the Postal Service monopoly will try to win exemptions for the Postal Service's "days off"--a concept with which even the Postal Service generally agrees; and there will be an inevitable loss of volume. This last, Mr. Chairman, will simply force prices up for that volume remaining in the Postal Service -- hardly the type of reaction necessary to rein in inflation.

Let us analyze the question a little more closely. In testimony before the House Post Office and Civil Service Committee, General Bolger predicted a $250 million savings in Fiscal Year 1981 from the elimination of the sixth delivery day--the only course he believes open to him if the Postal Service suffers an appropriations cutback. The latest figures from the Office of Management and the Budget are in accord with this prediction. If this estimate is right, then a $600 million appropriations cut, as recommended by the Senate Budget Committee, will cause a much greater impact. The American people, it is our guess, would shortly thereafter be faced with substantial reductions in service--or a first class stamp more than the 20 cents now proposed by the Postal Service.

We question what savings the Postal Service actually will realize from cutting a day in delivery. It appears obvious that the result would be backlogged mail, a lack of facilities to store the mail, and increased overtime for letter carriers and processors who would be required to handle the inevitable backlog. The Postmaster General's forecasts of a three percent increase in productivity certainly would be jeopardized. And, no one knows how much would be lost in postal revenue from mail users who would be forced into alternative means of delivery.

Postmaster General Bolger announced just this past week a proposal to increase postal rates for most classes of mail. In the set of rate changes it filed before the Postal Rate Commission, the Postal Service asked only a 1.9 percent increase for rates affecting principally large publications (second-class "regular rate") and requested a 15.2 percent decrease in rates affecting smaller, rural publications (second-class within-county). As part of its justification for these changes, the Postal Service pointed to a volume shortfall of approximately 200 million newspapers in the mail beyond that estimated for a recent test year and noted that "a potentially important factor here is the expansion of alternative delivery modes." [Request of United States Postal Service For a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services, PRC Docket No. R-80-1 at 9.]

The Postal Service is making an obvious bid, from a commendable business sense perspective, to retain current volume and recapture lost volume for its system. As any business would know, and as the Postal Service seems graphically aware, deterioration of services and increased rates drive away business.

If 1981 begins with implementation of postal rate hikes and elimination of one day of delivery substantial loss of volume seems inevitable. The result for those staying in the system will only be inflationary with the same labor and plant costs spread over a smaller volume.

Not only would revenue decline from the Postal Service but fuel consumption by private delivery vehicles would rise. With the current system, a single letter carrier can efficiently serve hundreds of families in an area. If delivery stops, however, and post offices remain open, many families will use personal vehicles to retrieve their letters and newspapers on non-delivery days. In my state of Maine, Mr. Chairman, there are examples of rural areas where this could mean trips of 50 miles and more. And that situation would be repeated in many areas of our country.

Unfortunately, we are not dealing solely with the potential elimination of a day of mail delivery. As noted already, Postmaster General Bolger has stated that elimination would save approximately $250 million in the first full year. If budgetary cuts exceed this amount, other reductions will have to be made. One possible area of reduction which has been mentioned is the "revenue foregone" appropriation.

Alice Rivlin, director of the Congressional Budget Office reported on and severely underestimated the effect on newspaper readers of elimination of federal payments for "revenue foregone." In fact, Ms. Rivlin seemed to ignore the fact that elimination of this money would impact anyone other than nonprofit mailers.

Mr. Chairman, approximately $40 million of the current $726 million in "revenue foregone", according to CBO's own figures, is allocated to those publications which mail within the county of origin--an amount which covers approximately 50 percent of the Postal Service's costs of delivering these publications.

Director Rivlin said that revenue foregone appropriations "may be challenged as not targeting budget expenditures on specific national priorities." In 1970, Congress determined that appropriations to promote the flow of religious, educational, cultural and charitable materials was, in fact, a national priority. ANPA and NNA believe that maintaining this flow of information must remain a priority.

In addition, elimination of "revenue foregone" actually "targets" budgetary cuts directly at residents of rural Maine and other states where USPS delivered newspapers play such a fundamental role in the conduct of community life. These important citizens are the ones who would be directly affected by elimination of this money. A more directly discriminatory budgetary cut could not be made.

While Rivlin admits elimination of this money would result in rate increases averaging 45 percent for affected mailers, she characterizes this increase as "moderate." Rate increases this substantial would have a disastrous effect on most smaller newspapers. ANPA and NNA do not consider 45 percent to be moderate. We know that such a move would result in considerable financial hardship for all smaller newspapers and the possible demise of some. Equally important this could mean that some readers would no longer be able to afford a newspaper and thereby be deprived of the vital information that these community-oriented newspapers provide.

We believe that her testimony can be given its proper weight if it is placed in perspective by closely examining her statements concerning non-profit mail subsidies. Ms. Rivlin said, and I quote:

> The notion that postal subsidies make a variety of information available to citizens who might not otherwise be able to afford it is not supported by our analysis. Higher-income households receive a portion of nonprofit mail that is far greater than their proportion to the population. Nearly one-third of the subsidized third class mail in 1977, for example, went to the 16 percent of households with annual incomes of $25,000 and over. Conversely, households with incomes under $5,000 represented about 16 percent of the population but received less than 10 percent of the mailfrom nonprofit organizations.

Mr. Chairman, the thrust of this analysis is misguided. Of course, an outsized portion of the mail from charitable and other worthy organizations goes to financially secure households. How else are they to obtain the funds necessary to help or inform those in the less fortunate economic circumstances? Can these organizations really be expected to solicit from the very families who are in need of their assistance?

Mr. Chairman, we urge you carefully to scrutinize Ms. Rivlin's figures and conclusions on the revenue foregone appropriations.

Mr. Chairman, there are many people throughout our nation--far away from Washington--who vitally need the 6-day delivery service the Postal Service now offers. They depend on their mail delivery for essential services--including newspapers, medical prescriptions, and mail-ordered goods. Farmers and other rural citizens particularly need their Saturday newspapers for marketing information, agricultural prices, detailed weather forecasts, and a variety of other uses. This information and these services are taken for granted in urban areas; but it sometimes is too easy to forget that the newspaper is one of the few links to the rest of the country for many rural dwellers. Perhaps even more importantly, in many remote areas where the only TV and radio penetration--if any at all--is from a distance, the newspaper serves as the only source of local information.

You may be interested in a survey on Saturday delivery conducted by ANPA in 1976. Out of nearly 850 newspapers responding, 780 said they used Saturday mail delivery, covering some 1.9 million newspapers mailed each Saturday. If you extrapolate to the nearly 1,000 more daily newspapers which did not respond and add in the large number of weeklies which rely on Saturday mail, the number of newspaper readers who will be affected becomes apparent.

To sum up, Mr. Chairman, the U.S. Postal Service is too easily a target for the budget cutters. While it lacks the sex appeal of many other government agencies, it is the one arm of our government which is visible to everyone. More importantly, many citizens do more than use the mail--they depend on it. It would be unconscionable to ignore these citizens. We urge you to do what you can to stop what will be a disservice to mail users everywhere, and what will probably prove to be only a token, if not illusory, budgetary savings.

Thank you for the opportunity to express our views. We would be happy to answer any questions you might have.

SUMMARY OF STATEMENT

Mr. SACKLER. Thank you, Senator. Once again we would like to thank you for rearranging the schedule.

Since our formal statement has been submitted for the record, we do not feel it necessary to provide you with an oral summary of that. However, I would like to turn to Mr. Bishop and have him deliver the news as to how the postal cuts would have an impact upon his area in Maine and upon his newspaper.

Mr. BISHOP. Thank you.

In addition to what is in the prepared testimony, I would like to give you an example of just what will happen with proposed cuts in the public service subsidies and how that will affect our area of central and northern Maine. The Bangor Daily News has about 16,000 mail subscribers. This revenue amounts to $500,000 a year for the Bangor Post Office. If 1-day service is cut, we will have to make up alternate delivery on 6 days a week, not just 1. The post office is assuming they are going to save money on not having to provide service only 1 day. We will have to alter the means on 6 days. This will mean a loss of revenue of $500,000 or $600,000, with no appreciable means for the Postal Service to save any money.

We are already doing part of the work for them by hauling mail directly to outlying post offices. If you carry this further to a lot of other nonmetropolitan areas in the country—and I am just giving our situation as an example—I can see where the result of the cut in service will not be saving money, but will be inflationary. We will be running a dual delivery system, using twice as much gas, energy, and the whole thing will be counterproductive.

In our area we cannot, like every other nonmetropolitan area, accept the fact that we will be limited to 5-day service no matter what the subsidy is. I think this is a very important point with the Postal Service saying they can save $250 million by cutting out 1-day service. They don't think they can cut back their expenses and loss of revenue will be much greater, that is, as to publications.

The general feeling of the people in a nonmetropolitan area, as stated in our statement there, is that we depend on the mail. We don't just use it, we depend on it in every part of our life, not just in the newspaper area. I think this should be considered very carefully before any cuts in appropriations are made as to just what the full effects will be on postal service, particularly in the area of public service subsidy.

I think Mr. Sackler would like to address the subject of revenue forgone.

REVENUE FORGONE SUBSIDY

Mr. SACKLER. I think we would like to particularly emphasize the need to maintain the revenue forgone subsidy. The part of the revenue forgone subsidy which goes to the second class publications affects principally small, rural publications which most need the mail, which cannot afford alternative delivery and cannot afford the staggering kind of increase that would occur with the revenue foregone subsidy cancelled.

EFFORT TO BALANCE BUDGET

Senator DECONCINI. As you know, the reason we are considering this is in an effort to balance the budget. It is difficult to balance the budget until you stop spending so much money. I don't think anybody wants to cut back services of mail to rural areas or metropolitan areas, but quite frankly, to oppose a cutback and not offer something else, maybe you have someplace else where we can save between $250 and $600 million that you can offer to the committee. It is just very difficult for us to balance the budget if that is what is the concerted agreement is in this country—and I think it is. The same people who want 6-day service are also hollering about inflation and too much Government spending. I know from the mail I receive from Arizona we would be injured severely by cutting back service. I get as much mail from rural areas about inflation—"Why don't you do something about inflation?"

How do you suggest we do it without cutting everybody or a lot of people?

Mr. SACKLER. We understand the great difficulty of the question. We appreciate the fact that you are getting pressures from both sides. Certainly our members editorialize on a balanced budget.

Senator DECONCINI. Indeed they do.

Mr. SACKLER. We certainly don't deny that. As far as suggestions as to where to make up the other $350 million, we don't have any at present. We will try to give some consideration to that and perhaps get back to you with something on that. As we did mention in our written statement, the Postmaster General himself estimates in fiscal year 1981 they could only save approximately $250 million of the $600 million by eliminating Saturday mail delivery.

Senator DECONCINI. I just want you to know—I can't speak for the committee or anyone else in this body—if we do cut back on the postal subsidy, it won't be because we want to bring less service, or damage your business, or deprive the rural parts of this country out of their communications system. In lots of them that is the only communication they have. It it just a fact of trying to balance the budget, where do you take the money from? Believe me, it is no easy chore. But I think we will balance it, and if we do balance it, I think this is a place that will have to take some reduction. Maybe not as much as the Senate or the House has offered. I just tell you that any reduction is not directed or targeted at your industry or toward the people you serve, which I think you do make a good argument. Sometimes the only line of communication is your publications.

We thank you very much. Your full statement will appear in the record for all Senators to review.

Mr. BISHOP. I just would like to emphasize the balancing of the budget is a priority item. We agree with that very, very much, and it is a difficult situation.

Thank you.

Senator DECONCINI. Thank you.

National Treasury Employees Union

STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

ACCOMPANIED BY:

JERRY KLEPNER, DIRECTOR OF LEGISLATION
RICHARD ROBINSON, ASSOCIATE COUNSEL
GEORGE SAM, PRESIDENT, CHAPTER 52, NTEU, AUSTIN, TEX.

Senator DeConcini. Our next witness will be Mr. Vincent Connery, National Treasury Employees Union.

Mr. Connery, we welcome you here today. Please introduce your colleagues. Your full written statement will be inserted in the record, if you would please limit your oral summary to 5 minutes.

[The statements follow:]

STATEMENTS OF VINCENT L. CONNERY

I am Vincent L. Connery, National President of the National Treasury Employees Union. Our union is the exclusive representative of approximately 115,000 Federal workers, including virtually all employees of the Internal Revenue Service.

During the many years we have testified before Congress concerning appropriations for the IRS, never have we witnessed an atmosphere such as that which prevails on Capitol Hill today. Rampant inflation and a growing alarm over the state of our nation's economy have fostered a strong desire on the part of many members of Congress to enact deep cuts in Federal spending.

Under present circumstances, we believe that the Subcommittee's deliberations concerning the IRS appropriations take on an even greater significance. At a time when controlling Federal spending is of prime concern, the resources of the government's principal source of revenue must be allocated wisely. Revenue that goes uncollected when the IRS is not given sufficient funding to operate effectively represents a tremendous loss to the government and a real impediment to a balanced budget.

In addition, the very nature of the IRS mandates that the Service's appropriations request be viewed differently than those of other Federal programs and agencies. While other departments are involved in the allocation of government resources and promulgation of regulations,the mission of the IRS consists of assessing and collecting tax revenues from U.S. citizens in a just and thorough manner.

Because of these unique responsibilities, the IRS must maintain a strong enforcement effort while answering taxpayer demands for service and equity. These concerns are vital to the maintenance of the voluntary compliance system upon which the IRS' entire mission is predicated.

We were somewhat encouraged, therefore, when the Administration requested in its first budget submission an additional 1413 average positions and a total authorization of $2,385,078,000 for FY 1981. Still, these requests reflected only a 1.6 percent increase in staffing and a 3 percent increase in funding. We seriously doubted that these small amounts were sufficient to offset the increasing demands that will be placed upon the IRS in these difficult times.

The problems faced by the IRS will be heightened, however, as a result of the revised fiscal year 1981 budget submitted by the Administration. In their second appropriations request, the President is seeking to cut $25 million in badly needed funds from the IRS budget. This request represents only a two percent increase in funding and less than one percent in additional personnel. We believe that in our nation's present economic situation such reductions totally belie logic and common sense.

In recent years, the budget submissions for the IRS have been erratic to say the least. The requests for personnel, for example, have ranged from an 8.4 percent increase in fiscal year 1975, to a 3.1 percent decrease in fiscal year 1977. Last year, the Administration sought a .3 percent decrease in the number of IRS employees.

Though this Subcommittee has prudently maintained staffing levels at a much more even keel than these requests indicate, the inconsistent attitude toward the funding of the IRS adopted by the Office of Management and Budget over the past five years has contributed significantly to the problems which the IRS now faces, especially the drastic increase in the number of citizens who fail to file any tax return.

For years, we have argued that the IRS has been beset by a lack of adequate personnel, a reduction in its ability to enforce the tax laws in a fair and effective manner, and continuous production pressure which has victimized the agency's employees and the nation's taxpayers alike. While the Administration's initial budget represents some improvement over last year, we feel that it still fails to address the numerous problems confronted by IRS in each of its major program areas.

Examinations and Appeals

These divisions of the IRS are reponsible for the examination of taxpayer returns and the administrative settlement of taxpayer appeals of audit findings. The initial Administration budget request called for an increase of 170 average positions over FY 1980 levels. With this additional staffing, the IRS claims that it will examine approximately 62,000 more returns in FY 1981 and, as a result, tax assessments will reach $6.3 billion, up $651 million from the current fiscal year. The revised IRS budget trims over $10 million from the Examination and Appeals Division and provides for an unspecified number of "staff reductions." We have serious doubts that the IRS will be able to accomplish these ambitious goals with the scant resources requested by the Administration.

For example, the IRS budget submission claims that increased attention will be devoted to more complex audits which yield higher returns. Yet, in the initial figures presented by the Administration, only 62 new Revenue Agent positions will be created. Since Revenue Agents conduct the most complicated audits, we do not believe that an 8 percent increase in recovered taxes can be obtained with an increase of only one-half of one percent, or less, in a key part of the work force responsible for its accomplishment.

In addition, the IRS'projected increases in audited returns and additional assessments are even more unrealistic in light of the Administration's appropriations request for fewer Tax Auditors. These individuals conduct less complex audits, usually of individuals and small businesses. The IRS is seeking to eliminate at least 107 Tax Auditor positions, but is still maintaining that this reduced work force can recover greater tax deficiencies in fiscal year 1981. We believe that this projection will prove impossible to achieve.

The fact of the matter is that Tax Auditors, as well as Revenue Agents, are already overworked. As cited in a recent article in Forbes magazine,[1/] since 1970, the number of returns filed rose 24 percent while the tax laws have become much more complex in nature. Yet, during this same time period, the IRS had only 17 percent more people auditing tax returns. As a result, the number of returns examined has fallen 3 percentage points, and the middle-income taxpayer knows that his or her chances of being audited are only about 3 in 100.

These figures translate into very real, day-to-day problems for IRS employees and the taxpaying public. The lack of adequate personnel results in hurried audits, lack of proper attention and service to individual taxpayers and the inability of Tax Auditors to perform their duties properly.

The extent of these difficulties is best illustrated by the experiences of our membership. Perhaps the most telling evidence came from one of our Chapters in a major metropolitan area on the West Coast. Chapter officers in the Los Angeles District sent a questionnaire to Tax Auditors in their area to determine the depth of the problems. The results revealed the following:

[1/] Smith, Lee; "The $50 Billion that IRS Isn't Collecting;" Forbes, January, 1980.

- cases retained by the Auditor because they were unable to be completed go into an overnight file. Most cases were put into this file because they required additional information or research, or simply needed more time to complete properly than could be done in a standard interview. Sixty-three percent of those surveyed said they were not given adequate time to catch up with their excess cases.

- It was common practice for management to order the Tax Auditors to schedule "ghost appointments." This practice, similar to overbooking by airlines, means scheduling more appointments than there are Auditors on the assumption that there will be several "no shows." If all taxpayers keep their appointments, some are forced either to wait or are sent home.

- Tax Auditors, due to lack of time, are often required to accept a taxpayer's oral statement in lieu of "hard" evidence such as receipts. Forty-eight percent of those surveyed felt that management encouraged acceptance of oral testimony to save time even though standard procedures dictate that such practices should only be followed in certain instances.

- The Tax Auditors reported that they are encouraged by management to close cases after one interview with a taxpayer. Oftentimes, cases are concluded to the disadvantage of either the IRS or the taxpayer simply for the sake of removing them from the active file. Eighty-five percent of the Auditors felt that the emphasis on first interview closures affected the quality of the audit.

These conclusions are not indicative of isolated problems. In August 1979, the General Accounting Office issued a report[2/] criticizing the quality of IRS audits of individual taxpayers. The lack of quality audits, according to the GAO, resulted in some taxpayers paying more than they owe; a loss of substantial revenue; and an undermining of the principle of voluntary compliance.

The GAO analyzed a statistical sample of 490 income tax audits from 5 IRS Districts. Of these, 240 had been reviewed by Examination and 250 by Appeals. The GAO found that IRS personnel too frequently assessed an incorrect tax due to technical or computation errors. Such miscalculations totaling $37,000 in the sampled cases, were made in 34 percent of the review cases and 45 percent of the appellate cases. When projected over the inventory of similar cases examined by the 5 districts, these errors could total $1 million, according to the GAO.

In addition, the IRS overlooked significant issues in many of the audits. This happened in approximately 53 percent of the surveyed cases. Since the IRS had not audited these items, neither the GAO, nor anyone, is able to determine the true loss of revenue.

[2/] "IRS' Audits of Individual Taxpayer and its Audit Quality Control System Need to be Better;" GGD-79-59; August 15, 1979.

The GAO report confirmed the results of our Chapter survey which showed that Tax Auditors, under management pressure, did not make required probes for unreported income, relying instead on taxpayers' oral testimony. In 62 percent of the review cases and 52 percent of the appellate cases such inquiries were not made.

The GAO concluded that the problems faced by the lack of sufficient quality review could be solved through improving the "scope, depth, and documentation" of audits. This can only be accomplished through more personnel, thus allowing more time for quality audits to be conducted.

In light of the GAO findings, the Administration's appropriation request makes no sense. With the quality of audits already suffering, cutting the number of Tax Auditors will ensure that the problems will worsen in fiscal year 1981. Even at current staffing levels, the production pressure on Tax Auditors is forcing many to perform hurried audits to the detriment of taxpayers and the IRS alike. Further cutbacks in the number of these employees can only exacerbate what is generally acknowledged to be a very bad situation.

In its report on audit quality, the GAO uncovered evidence of the true effects of production pressure on Tax Auditors. "One theme that ran through most of the cases /of audit mistakes/ we identified was time pressure exerted by management, whether real or perceived, to do audits as quickly as possible," they reported.

The GAO further noted that IRS' own procedures tended to limit the number of items audited and that Group Managers themselves were instructed not to perform in-depth reviews. Although IRS guidelines do not restrict Tax Auditors from closely scrutinizing new issues, the production pressures under which they are forced to work discourage Tax Auditors from expanding the scope of their review, even when justified.

To measure the effect of production pressure on audit quality, the GAO asked Group Managers and Tax Auditors a series of questions dealing with the time allowed to do audits. Their responses were:

3/	Group Managers (in percentage)	Tax Auditors
Quantity of audits over-stressed to detriment of quality	39 - yes	70 - yes
Quantity stressed but quality does not suffer	30	19
Adequate balance between quantity and quality	20	9
Quality stressed but quantity does not suffer	11	2
Quality over-stressed to detriment of quantity	0	0

In addition, 85 percent of the Tax Auditors and 71 percent of Group Managers said that employees had less than adequate time to perform a quality audit. When asked if a reduction of workload would increase quality, 86 percent of the Auditors and 72 percent of the managers answered in the affirmative.

These findings have been substantiated by many of our members in all parts of the country. In the Los Angeles survey of Tax Auditors, 40 percent of those polled said that quantity was stressed over quality, while 44 percent said both were emphasized. Only 7 percent said quality was given higher priority. Fifty-nine percent felt they were under pressure to close cases, even at the expense of quality.

From a sizable Midwestern district office, a member informed us of a management memorandum in which the Chiefs of two Examination Branches reported their dissatisfaction with the time utilized by Tax Auditors in conducting audits. The managers complained that not enough audits were being conducted within the average rate of 3.1 hours. Nowhere does the memo mention the quality of the audits conducted.

The memorandum concludes by stating:

> "The office audit function must be operated in a routine, organized fashion. The criteria should be clearly out-

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3/ Ibid.

> lined and specifically followed. The group managers should be in full support, keeping in mind the stringent time requirement of a National time per case as specified in the District work plan. Management's efforts should be directed to the ultimate culmination of office audit cases in accordance with the work plan." (Emphasis added)

The memorandum is valuable in that it provides an unusually frank glimpse at management's pressure tactics. As the existence of this document would indicate, our local Chapter President was on the mark when he wrote, "... time pressures and statistics are alive and well in (our district)."

The thread of production pressure is not confined to one district or one division; it is interwoven throughout every level of the IRS. On several occasions over the past decade, we have appeared before Congress to discuss this persistent problem. Today, in 1980, the evidence suggests that it is as real and pervasive as ever. Through our own experience, the findings of the GAO, and the corroboration of our members in all areas of the country, we can see that the system of production pressure must be recognized and stopped before any meaningful program improvements can be accomplished by the IRS.

With some variations, the system operates in the following manner. The Commissioner of IRS directs each Region and District to project the amount of dollars they will be able to collect and the number of cases they can close in the upcoming fiscal year. Based on this information, IRS National Headquarters develops a "workplan" to achieve a predetermined amount of tax assessments and cases to be closed. The plan is passed along to each Region wherein each District develops its own plan to meet the preordained figure. The District Director passes the plan to each Division (e.g. Examination, Collection). It then goes to each Branch and to each Group. The Group Manager then places the burden of meeting the requirements of the plan onto the employees who are the ones performing the actual work.

These "goals," however, seldom appear in memoranda or official orders. Management is much too subtle for that. Rather, they are manifested in the form of production pressure, pressure to close cases and obtain additional assessments, to maintain the group's statistics at a certain level, and to keep pace with the production of other groups and districts.

As bad as the effects of the "system" have been, the future promises to be even more ominous. With fewer personnel to perform the work and the IRS explicitly seeking to obtain a higher dollar amount through audits in fiscal year 1981, there is every reason to believe that the pressure will become even greater. In addition, certain provisions of the Civil Service Reform Act of 1978 which deal with employee performance threaten to cast a legitimacy to this system of production pressure.

Under the Reform Act, an employee's performance evaluation will be critical to his/her job security. Any worker will be subject to dismissal if the supervisor determines that he/she is performing unacceptably in one or more of the "critical elements" of the job.

We were understandably concerned, therefore, when the IRS recently released its productivity measurement plan designed to "ensure that productivity measurement, evaluation, and enhancement data are incorporated, as appropriate, as an integral part of all management, evaluation, and budgeting systems..." Our major fear is that this program could be used to formalize and further entrench the "production" mentality that has undermined the goals of efficiency and fairness in the IRS, while causing a tremendous turnover among the highly trained employees who staff the Examination Division.

In the plan, management states that members of the Senior Executive Service in the IRS will be evaluated on the basis of "improvement in productivity in the organization(s) for which /they/ are responsible." The criteria for measuring improved productivity will be determined by top level officials of the IRS. Under such a system, it is not difficult to conceive how managers will be under more pressure than ever to meet the requirements of a nationally-devised workplan. Any manager who fails to deliver the predetermined amount of closed cases or assessed tax liability can be dismissed with no recourse.

This intensified pressure placed upon IRS managers will filter down to rank and file employees also, with one critical difference from the present system. If the IRS is successful in carefully inculcating production goals into performance standards, employees will not only be pressured but fired, not for incompetence, but for failing to meet preordained quotas. Under such circumstances, quality and equitable enforcement will suffer even further as the number of closed cases - not true efficiency or fairness to the taxpayer - becomes the official standard of employee measurement.

In summary, we believe that the problems faced by the Examination and Appeals Division will be sorely exacerbated by the Administration's initial budget proposals. We urge the Subcommittee to substantially increase the number of Revenue Agent and Tax Auditor positions. Without a greater number of Revenue Agents and Tax Auditors, the IRS' stated goal of processing more returns and securing increased tax assessments will be impossible to accomplish.

Collection

Following years of relative neglect, the Administration finally requested an additional 1740 positions and $35.3 million for the Collection Division in its initial budget submission. In its revised proposal, the Administration cut their request by $3 million which is less of a decrease than that suffered by other Divisions, but still a substantial loss.

Collection, which is charged with collecting unpaid accounts and securing unfiled tax returns, has been chronically understaffed for years. While we certainly support increased funding for this vital activity, we still dispute the IRS contention that this infusion of money and personnel will solve the problems faced by Collection or enable this Division to increase its output by as much as 25 percent.

Basically, the Collection Division has been subject to the same production pressure resulting from the national workplan as the Examination Division. Placed under pressure to close cases, Revenue Officers - those employees responsible for collecting unpaid taxes - have been forced to leave large amounts of payable taxes written off as uncollectible. Under the rules of the workplan, the closure itself is more important than the actual revenue collected. One of our members characterized the situation as "get what you can in the least amount of time and run."

Extreme workload pressures generated by management often cause Revenue Officers to "shelve" cases for weeks or even months. The effects of this practice have proven to be harmful to the government and the taxpayers. The backlog of cases has also caused the IRS to institute a policy of ignoring tax delinquent accounts (TDA's) that are less than $400. As anyone can see, this practice can result in a considerable loss of revenue for the government.

Under such conditions, it is no wonder that the principle of voluntary complaince has become dangerously threatened. The extent that compliance has deteriorated was documented in a voluminous, highly-publicized report issued by the GAO last July.[4]

The primary conclusions drawn by the GAO, after exhaustive research and analysis of the Collection Division, was that an estimated 5 million people, owing some $2 billion in income taxes, did not file returns in 1972, the latest year for which complete data was available. However, the IRS secured only about 12 percent of these delinquent returns. Given the steady increase in returns filed each year since 1972, it is reasonable to assume that the non-filing population has grown also with a concurrent loss of billions in revenue.

The GAO recommended that this pressing problem be addressed by estimating and analyzing the non-filing population periodically and using the information for more productive investigations. Secondly, GAO called for a more vigorous "Taxpayer Delinquency Investigation Program"; and thirdly, the GAO recommended that additional efforts be made to apprehend more nonfilers through the use of special programs and available information. In response, the IRS expressed their agreement with the GAO's conclusions, but claimed that limited resources were the root of the problem.

Undoubtedly, inadequate resources have caused many of the difficulties faced by the Collection Division today. However, the increases requested in the Administration's fiscal year 1981 budget will not solve the present problems.

Although the IRS is requesting 1740 positions, a close look at the budget submission shows that 821 of these positions are transfers from the Returns Processing and Accounting branches in the Data Processing Division. These personnel are not being shifted to buttress Collection's work force; they are being transferred because their program (followup collection on Service Center work) is being sent to the Collection Division.

While Collection will indeed receive new positions, many of these will be used to meet the additional responsibilities that have been assigned to this Division. Considering that, at a minimum, approximately $2 billion in uncollected taxes is at stake, we believe that the IRS should have requested a far more drastic increase in permanent positions in the Collection Division.

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[4] "Who's Not Filing Income Tax Returns? IRS Needs Better Ways to Find Them and Collect Their Taxes; "GGD-79-69; July 11, 1979.

We must also call the Subcommittee's attention to the fact that only 340 of the "new" positions will be Revenue Officers. Since these employees are the backbone of the Collection Division, this modest increase will have little effect nationwide.

In addition, the IRS last year announced that they were reallocating approximately 300 Revenue Officer positions out of several large Northeastern and Midwest cities to meet staffing needs in the "Sun Belt." We are certain that a shortage existed in the Southern and Western cities since their population has risen dramatically in recent years. However, the workload in the Northeast and Midwest - particularly Manhattan which is slated to lose 72 positions - continues to grow also.

As a result, the 340 positions will only be sufficient to cover those slots lost in the larger areas. At a time when the IRS is supposedly concentrating its efforts on securing delinquent returns, we believe it makes no sense to "shortchange" the East and Midwest which remain major business and population centers in our nation.

We would also like to point out another small, but meaningful, item in the Collection budget. The original Administration budget for the IRS allocated $51,000 for "Space Alteration." For several years now, the IRS has been experimenting with the "open space" concept. Instead of individual offices, employees work in a large open area separated by partitions. The IRS has spent hundreds of thousands of dollars over the past few years implementing this arrangement.

Our members, however, have universally condemned the "open space" arrangement. They claim it hinders concentration, affects morale, and violates the taxpayer's right to privacy during an audit or investigation. In an era when we are constantly seeking to protect individual rights and liberty, it seems that taxpayers at least have the right to privacy when discussing their personal finances.

In addition, at a time when the IRS does not have sufficient resources to secure delinquent taxes, it is an outrageous waste of funds to be implementing such worthless modifications. While the Administration's revised budget calls for reduction in funding for office alterations, we have seen no figures to indicate how deep these cuts are. In any event, we ask that any "space modification" funds be specifically prohibited from being used for "open space."

In summary, the problems faced by the Collection Division are staggering. The Administration's request, however, is still inadequate to deal with current shortcomings, let alone any workload increase. If Congress and the President are serious about acting on the GAO's recommendations to recover some of the $2 billion a year lost to non-filers, they must exhibit the courage to request the necessary resources to do so. Otherwise, the problems of delinquency and decreased compliance will continue to spread.

Taxpayer Service and Data Processing

Perhaps no Division of the IRS has come under more unfair criticism than Taxpayer Service and Data Processing. This should come as no surprise since the Taxpayer Service Division has more public contact than perhaps any other in the IRS, and Data Processing is the first stop for every tax return filed in the United States. No Division is more directly affected by the increase in the number of taxpayer and returns filed than this one.

Yet, in the face of a rising workload of 3.7 percent in returns and refunds, the IRS is essentially maintaining a static work force in Taxpayer Service and Data Processing. As the Administration admits in its appropriations request, this will translate into an actual decrease in service to taxpayers. Once again, by failing to request additional resources to meet the workload, the IRS is ignoring the recommendations of the GAO and the House and Ways Means Committee.

Last year, the GAO, at the request of the Joint Committee on Taxation, assessed taxpayer satisfaction with the manner in which the IRS responds to problem inquiries, i.e. those requiring contact with the IRS more than once before resolution.[5/] Among their findings, the GAO reported that IRS' timeliness in dealing with such inquiries was lax. Nearly three-quarters of the people surveyed had been forced to contact the IRS 3 or 4 times before a solution was reached.

[5/] "How Taxpayer Satisfaction with IRS' Handling of Problem Inquiries Could be Increased;" GGD-79-74; September 18, 1979.

The GAO recommended several steps to improve the resolution of problem inquiries:

- GAO suggested that IRS employees contacted by taxpayers determine whether any prior contacts are made so that a proper referral can be effected;
- increase the handling of problem inquiries at the district level. GAO found that while 32 percent of all taxpayers with problems were dissatisfied with the IRS, only 24 percent of those who contacted district offices were dissatisfied compared to 54 percent with the National Office and 40 percent with the Service Centers.
- GAO also recommended that the IRS should improve its evaluation and followup of problem inquiries through the use of questionnaires and simplified tax forms.

In so recommending, the GAO echoed many of the sentiments expressed by the Subcommittee on Oversight of the House Ways and Means Committee. In general, the Subcommittee concluded that the IRS' Problem Resolution Program (PRP) was potentially a successful method of resolving problem inquiries. In addition to the recommendations proffered by the GAO, the Subcommittee urged that greater publicity be given to the PRP and that its data programming capability be improved. The Subcommittee did emphasize that it viewed an effective and timely complaint resolution system as a crucial element of the voluntary compliance system.

We agree with the findings of the Subcommittee on Oversight and the GAO. We must stress, however, that each of their conclusions and recommendations have one thing in common; they would require a definite commitment of personnel and resources if they were to be implemented effectively. Apparently, in the Taxpayer Service and Data Processing Division, as in Examination and Collection, the Administration is willing to let slide these major concerns of Congress and the public by not requesting adequate staffing. Clearly, if any positive action is to be taken to implement the recommendations of GAO and the Ways and Means Committee, this Subcommittee must assume the responsibility.

Other Concerns

There are numerous other issues which we feel should be brought to the attention of this Subcommittee. Though these problems do not relate directly to the appropriations process, we feel that it is important that the Subcommittee understand them so as to develop a greater appreciation of working life within the IRS.

Foremost among our other concerns is the high turnover rate and low salary level of employees in the IRS. For years we have contended that the

IRS is the largest post graduate training school for accountants, auditors, and tax attorneys in the nation. This is so primarily because of the low rates of pay and the difficult working conditions within the IRS.

In a study recently conducted of recruitment and salary practices of the IRS, the state of California and private concerns, [6] Norman L. Garrett, a noted personnel consultant, found that the IRS was the lowest paying of all major accounting groups in the Southern California area.

The purpose of Dr. Garrett's study was to evaluate the recruitment practices for the hiring of accountants and auditors in the Los Angeles District Office of the Internal Revenue Service, as compared to other governmental agencies and private organizations in the greater Los Angeles area. Dr. Garrett found that low beginning salaries and a lack of competitive fringe benefits presented problems for the IRS.

Among Dr. Garrett's key findings was that the IRS is the lowest paying of all major accounting entities in Southern California for entry level positions. The following chart illustrates this conclusion:

Employer	Entry Level Salary Range
IRS	$10,500 - GS-5 (Tax Auditor) 13,000 - GS-7 (Revenue Agent)
State of CA	10,700
City of LA	13,800 - $17,200
LA School District	14,800
"Big 8" Accounting Firms	15,000 and/or above 15,000 with MBA

In his study, Dr. Garrett found that there is a need for the Internal Revenue Service to take a much more aggressive, active and innovative approach to college recruitment to overcome the inherent handicaps in their lower salary structure. Among his recommendations, Dr. Garrett urged that the management of IRS make an official policy statement regarding the recruitment and selection of accountants and auditors. He further urged that an action plan for recruiting accountants and auditors be designed.

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[6] Garrett, Norman L.; "A Comparative Analysis of Recruitments and Hiring Practices for Entry Level Accountants and Auditors in the Greater Los Angeles area;" September 12, 1979.

Dr. Garrett also concluded that consideration should be given to hiring a select number of individuals at the GS-9 level to be competitive in the Greater Los Angeles area for entry level accountants and auditors. Under present economic conditions, we believe it is highly doubtful that the IRS will implement any of these recommendations, even though we feel they would have a tremendous benefit for the service.

The gap between Federal and private sector salaries is even greater at the senior levels. The journeyman grade for a Revenue Agent is only a GS-11, at an annual salary of $20,611.00. When compared to private sector pay practices this figure is abysmally low.

In their annual survey to determine private industry pay rates and compare them to Federal salaries, the Labor Department's Bureau of Labor Statistics surveys two occupational categories - Accountant and Chief Accountant - under which Revenue Agents fall. When the findings of the BLS are compared to average Federal salaries in the same category, we find that a GS-11 Revenue Agent trails his/her private sector Accountant counterpart who is performing the same level of work by 13.9 percentage points. Those private industry employees ranked as Chief Accountants outstripped their Federal equivalents by 20.9 percent.

Revenue Agents are the backbone of the IRS' Examination Division as it is these employees who undertake the complex audits that yield the highest amounts of assessed taxes. The IRS admitted as much in their budget submission by noting that adding more Revenue Agents would be the most efficient, productive way to increase Examination's audit effectiveness. In light of this fact, as well as the increasing complexity of the tax code and the subsequent demands placed on Revenue Agents, we feel that these key workers should be paid in accordance with their talents and responsibilities. We believe that, at a minimum, this Subcommittee should recommend that the journeyman grade level of Revenue Agents be increased to GS-12.

In addition to low pay, turnover is also a significant problem. For example, in the survey of Tax Auditors and Revenue Agents in this same area which we cited earlier in our testimony, it was found that between June of 1976 and March of 1980 there was a 24 percent turnover rate among Revenue Agents in that District and a 41 percent turnover rate among Tax Auditors. Many of these employees left the IRS because they could no longer tolerate the extreme production pressure, others simply found much better paying jobs in the private sector.

Obviously, this high turnover rate represents a tremendous expense to the IRS in terms of recruitment, hiring and training of new personnel. As employees enter the Service, time and money must be devoted toward training these individuals, and they must be allowed a reasonable amount of time to reach the stage where they can conduct an audit with little or no supervision.

For example, a beginning Tax Auditor paid at the GS-5 level requires an investment of approximately $4,328.00 and two years of time before he/she has reached the full working level. By failing to create a suitable working atmosphere for its employees, the IRS is, in effect, undermining its investment, and cheating itself of valuable, experienced personnel. Because the turnover rate places even more pressure on incumbent Revenue Agents and Tax Auditors, the level of service to the public also declines. In effect, the government and the taxpayer are paying for the IRS' shoddy management practices and the impact of "production" mania.

These problems are by no means confined to professional employees within the IRS. For example, a very important position in the Service is that of the Group Clerk. These individuals are clerical personnel who perform a wide range of support duties for professionals in the Examination and Collection Divisions.

Though the job of Group Clerk is paid only at the GS-4 level, these individuals have a wide variety of responsibilities that far exceed their grade level. We have enclosed (see Attachment #1) a complete list of the duties which Group Clerks must perform in the Examination Division in a large District in the Southwest United States. As is evident from the data in this attachment, the hours required to perform the Group Clerk job effectively far exceed their workmonth Group Clerks, for example, who work with a group of Revenue Agents in the Examination Division, may need as much as 275 hours a month to perform the duties required of them.

With such a staggering amount of work and a tremendous lack of personnel, Group Clerks simply do not have enough time to perform all of their duties. In order to avoid an administrative breakdown in the Examination and Collection Divisions, it is imperative that more Group Clerks be hired.

To make matters worse, Group Clerks are graded at the GS-4 level, since they are considered to be clerk-typists. In reality, as we point out in our attachment, Group Clerks perform a wide variety of tasks - typing, filing, processing returns and mail and responding to telephone inquiries - which are beyond the description of most clerk-typists in the Federal government. Their duties are more akin to that of secretaries who can reach a GS-7 level. In point of fact, a secretary to a GS-13, the levels at which many Group Managers and Revenue Agents are paid, is entitled to GS-5. In light of this discrepancy, we believe that the position of Group Clerk should be upgraded to at least the GS-5 level to be commensurate with the broad range of duties performed by these employees.

During the past fiscal year, we also encountered a number of issues which adversely affected employees at the IRS Service Centers around the nation. When the Carter Administration proposed and implemented new regulations which would require Federal employees to pay for parking, we immediately sought exemptions for these installations.

Due to the fact that the Service Center operations require a large amount of space and employ thousands of people, most of these facilities are located in suburban areas not readily accessible by public transportation. In addition, because most Service Center employees work on a shift system, it is often difficult for employees, many of whom are single heads of households, to utilize public transportation during the late night and early morning hours.

Fortunately, most of the Service Centers were exempted from having to charge their employees parking fees, however, the Cincinnati Service Center in Covington, Kentucky and the Austin Service Center in Austin, Texas have implemented parking fees for their workers. We are currently contacting Congressional representatives from those areas and are seeking to roll back the parking fees by showing that alternate means of transportation are not readily available to employees at these installations.

In the meantime, however, the workers at these Service Centers, most of whom are at the GS-3 and GS-4 level are being forced to pay for their parking. In an era of steadily rising gasoline and automobile prices, we believe that this is an unfair penalty to impose on these lower paid employees. This injustice is compounded by the fact that most private industry installations in areas around the Service Centers do not charge their employees for parking. For employees at the Cincinnati and Austin Service Centers, however, paid parking is just one more difficulty they must face during the course of their employment with the Internal Revenue Service.

We are also concerned over the near total lack of any day care facilities in IRS installations around the country, particularly at the Service Centers. As we indicated, a great many employees at the Service Centers are single heads of households. Yet, despite the fact that it is the stated policy of Congress to aid single parents in finding employment, and many Federal agencies have already done so, day care centers remain a rarity at most IRS facilities. While the cost of opening day care centers would be minimal, the benefits to the IRS and to the public would be great.

For example, by having day care centers on premise, many working mothers and fathers would find it easier to maintain their jobs because a convenient facility was accessible to them. In this manner, the IRS would be able to retain qualified, trained employees, who in turn, will be able to provide better service to the taxpaying public. The government benefits by having these employees as working, productive members of society, instead of on the unemployment or welfare rolls. We urge the Subcommittee to consider this very humane, worthwhile suggestion and urge the IRS to initiate an adequate day care program.

Two years ago, our union vigorously opposed an IRS reorganization plan affecting certain Districts in twelve less populated states. This "streamlining" involved the moving of mid-level management positions and the Appeals Staff to "Prime Districts" in other, larger states. We contended that the plan would have a severe impact on the efficiency of the Service, the taxpayers of the twelve states, and a large number of IRS employees.

Despite our objections and significant Congressional opposition, the IRS implemented the plan primarily because they claimed it would be "cost effective." For two years, however, we have found no trace of the supposed savings that "streamlining" would produce evident in the IRS budget. We urge this Subcommittee to demand of IRS an explanation why this plan, which has adversely affected the employees and taxpayers in twelve states, was implemented when no apparent benefits have been forthcoming.

Conclusion and Recommendations

In summary, we believe that the Subcommittee's deliberations on the appropriations request for the IRS is of paramount importance for fiscal year 1981. At stake is whether the IRS will be strengthened to enable it to perform a meaningful role in meeting the economic crisis now facing our country, or whether timidity and lack of ingenuity will prevail for still another year.

We believe that the political and economic climate is right for major improvements in the IRS' ability to fulfill its mission. Accordingly, we recommend that the following steps be taken:

- Urge the Commissioner of the IRS to reaffirm that the mission of the IRS is to strengthen voluntary compliance by increasing audit coverage and collection action which will assist in offsetting deficits in the Federal budget.
- Grant the Examination and Appeals Division adequate personnel to conduct quality audits. Provide this Division with resources sufficient to meet its expanding workload.
- Set as a major priority the recovery of the estimated $2 billion in uncollected and unpaid taxes each year. These delinquent taxes are wasteful and attack the principle of voluntary compliance which is the bedrock of the agency. Direct IRS, in conjunction with our union and the GAO, to establish procedures and collection personnel levels needed to accomplish this goal.
- Improve the Taxpayer Service Division, especially the Problem Resolution Program, by increasing the number of Taxpayer Service Representatives in proportion to increases in taxpayers and returns filed.
- Set a firm policy against production pressure. Signal the IRS that appropriations will be determined by budgetary needs and workload increases, not on the amount of cases closed or money assessed in the previous fiscal year.
- Direct IRS to review grade levels of personnel to ensure pay rates are competitive with the private sector. Strengthen recruitment procedures and set as a major goal retention of qualified, experienced personnel to stop the loss of valuable workers to the private sector.

In conclusion, we believe that the economic conditions in the United States today dictate the necessity for the IRS to take a more - not less - active role in securing revenue. At present, the IRS audits about 2.5 percent of the population, according to estimates contained in the aforementioned Forbes article,[7] by increasing personnel and shifting the focus from quantity to quality, the IRS could conceivably double that percentage at an estimated benefit of approximately $6 billion to the U.S. Treasury.

Because of its mission as the key revenue producing agency in the Federal government, the IRS plays a central role in maintaining the strength and stability of the United States. Yet, for too long, past and present Administrations have consistently underestimated the value of this agency. We urge this Subcommittee not to echo the weak leadership of the Administration by requesting only a minimal increase in the IRS budget. Rather, by significantly strengthening the IRS and reaffirming its commitment to excellence, this Subcommittee can play a major role in helping the United States solve its present fiscal difficulties. We urge the Subcommittee to take the bold, but necessary, steps to meet our nation's urgent economic crisis.

[7] Op. cit.

ATTACHMENT 1

SOME TASKS PERFORMED BY FIELD EXAMINATION GROUP CLERKS (RECENTLY FORMED - CONVERTED FROM TRAINING GROUP)	HOURS PER MONTH
Processing Returns into Group (76 returns @ 20 min. per return)	25 1/3
Processing Returns out of Group (133 returns @ 20 min. per return)	44 1/3
Statute Control Procedures	5
Priority Controls	10
AIMS - Researching & Troubleshooting Problems	10
Time Reporting (daily & biweekly reports)	8
Verifying Technical Time Reports	3
Verifying & Processing Travel Vouchers	1
Filing - Correspondence, Personnel, IRM, Tax Services, Etc. (approx. 1 hr. per day)	20
Typing for Group Manager & Agents (approx. 2 hrs per day)	40
Handling the Telephone (approx. 1 hr. per day)	20
Processing Incoming Mail (approx. 1 hr. per day)	20
Other Administrative Duties (approx. ½ hr. per day)	10
	216 2/3 = 217
PLUS THE FOLLOWING QUARTERLY DUTIES:	
Verifying AIMS Inventory Validation Listing ---100% Validation - once a year (500 returns in inventory @ 5 min. per return)	42
---Sampling Validation - three per year - Each qtr. = (151 returns for sampling @ 5 min. per return)	13

SOME TASKS PERFORMED BY FIELD EXAMINATION GROUP CLERKS (WELL ESTABLISHED GROUP)	
Processing Returns into Group (74 returns @ 30 min. per return)	37
Processing Returns out of Group (94 returns @ 45 min. per return)	71
Statute Control Procedures	5
Priority Controls	10
AIMS - Researching & Troubleshooting Problems	10
Time Reporting (daily & biweekly reports)	8
Verifying Technical Time Reports	3

	HOURS PER MONTH
Verifying & Processing Travel Vouchers	1
Filing - Correspondence, Personnel, IRM, Tax Services, Etc. (approx. 1 hr. per day)	20
Typing for Group Manager & Agents (approx. 2 hrs. per day)	40
Handling the Telephone (approx. 2 hrs. per day)	40
Processing Incoming Mail (approx. 1 hr. per day)	20
Other Administrative Duties (approx. ½ hr. per day)	10
	275

PLUS THE FOLLOWING QUARTERLY DUTIES:

Verifying AIMS Inventory Validation Listing	
---100% Validation - once a year (775 returns in inventory @ 5 min. per return)	65
---Sampling Validation - three per year - Each qtr. = (170 returns for sampling @ 5 min. per return)	14

SOME TASKS PERFORMED BY OFFICE EXAMINATION GROUP CLERKS (FIRST SAMPLE GROUP)

Processing Returns into Group (181 returns @ 20 min. per return)	60 1/3
Processing Returns out of Group (204 returns @ 30 min. per return)	102
Statute Control Procedures	4
Priority Controls	4
Time Reporting (daily & biweekly reports)	7
Filing - Correspondence, Personnel, IRM, Tax Services, Etc.	12
Typing for Group Manager & Auditors	10
Handling the Telephone	40
Processing Incoming & Outgoing Mail	40
	279 1/3 =
	279

PLUS THE FOLLOWING QUARTERLY DUTIES:

Verifying AIMS Inventory Validation Listing	
---100% Validation - once a year (1225 returns in inventory @ 5 min. per return)	102
---Sampling Validation - three per year - Each qtr. = (134 returns for sampling @ 5 min. per return)	15

SOME TASKS PERFORMED BY OFFICE EXAMINATION GROUP CLERKS (SECOND SAMPLE GROUP)	HOURS PER MONTH
Processing Returns into Group (262 returns @ 20 min. per return)	87 1/3
Processing Returns out of Group (363 returns @ 30 min. per return)	181 1/2
	268 5/6 =
	269

This clerk did not list any other duties because, although other duties are performed, it appears that processing returns into and out of the group exceeds the amount of hours available during the month, and that there was no need to continue the list.

SOME TASKS PERFORMED BY COORDINATED EXAMINATION GROUP CLERKS (IN THIS SAMPLE, MANAGER IS ALSO DIRECTOR'S REPRESENTATIVE)	
Processing Returns into Group (20 returns @ 15 min. per return)	5
Processing Returns out of Group (35 returns @ 30 min. per return)	17 ½
Statute & Priority Control Procedures	4
AIMS - Researching, Troubleshooting Problems, Updating Controls	35
Time Reporting (daily & biweekly reports)	12
Verifying Technical Time Reports	1 ½
Processing Travel Vouchers & Preparing Expenditure Report	10
Dictation & Typing	60
Handling the Telephone (approx. 1 hr. per day)	20
Administrative Point of Contact & Misc. Administrative Matters (approx. ½ hr. per day)	10
Security Measures (approx. ½ hr. per day)	10
Filing - Correspondence, IRM, Personnel, Large Case, Etc.	20
Distributing Examination Division Mail (approx. ½ hr. per day)	10
Processing Incoming Mail (avg. ½ hr. per day)	10
Processing Outgoing Mail (approx. 45 min. per day)	15
Preparing Correspondence for Group Manager's Signature	20
Daily Conference with Group Manager - Planning Session (avg. ¼ hr. per day)	5
Organizing Workload (avg. ¼ hr. per day)	5
Researching & Gathering Information for Various Responses & Reports	20
	290

SOME TASKS PERFORMED BY COORDINATED EXAMINATION GROUP CLERKS (IN THIS SAMPLE, MANAGER IS ALSO DIRECTOR'S REPRESENTATIVE)	HOURS PER MONTH
PLUS THE FOLLOWING QUARTERLY DUTIES:	
Verifying AIMS Inventory Validation Listing	
---100% Validation - once a year (250 returns in inventory @ 5 min. per return)	21
---Sampling Validation - three per year - Each qtr. = (116 returns for sampling @ 5 min. per return)	10

THIS LIST OF DUTIES IS NOT ALL INCLUSIVE.

COMPARISON OF DUTIES

Position Description No. 03264N, Secretary (Stenography), GS-318-5	Position Description No. 90385, Group Clerk (Clerk-Steno), GS-312-4	Additional Duties Performed By Group Clerk (Steno), GS-312-4
Receives personal and telephone callers and screens those which can be handled by supervisor's subordinates or other offices and tactfully refers them as appropriate.	Receives, answers, or refers telephone calls and visitors.	
Personally takes care of many matters and questions including answering substantive questions not requiring research or technical knowledge.		Same as PD No. 03264N.
Receives, reads, and screens incoming correspondence, reports, etc.	Reviews and routes incoming and outgoing mail.	Same as PD No. 03264N.
Reads outgoing correspondence for procedural and grammatical accuracy, conformance with general policy, factual correctness, and adequacy of treatment.	Reviews and routes incoming and outgoing mail.	Same as PD No. 03264N.
Assembles and summarizes information from files and documents in the office or other available sources for use of the supervisor on the basis of general instructions as to the nature of the information wanted and its purpose.		Same as PD No. 03264N.
Keeps supervisor's calendar and schedules appointments and conferences.	Makes tentative appointments for Group Manager, Internal Revenue Agents, and Tax Technicians in their absence.	Same as PD No. 03264N.
Maintains control records on incoming correspondence and action documents and follows up on work in process.		Same as PD No. 03264N.

Makes all necessary arrangements for travel to include arranging schedule, making reservations, and notifying officials to be visited. Submits travel vouchers and reports.	Makes travel arrangements and processes travel vouchers.	
Monitors telephone calls for purpose of preparing summaries of conversation and commitment made.	Takes and transcribes dictation from individuals, during conference or while listening in on telephone conversations, taking verbatim or summary notes on significant points.	
Makes necessary arrangements for conferences.		Same as PD No. 03264N.
Informs supervisor as requested on such matters as procedure in clearance of memoranda, past practices with respect to various reports, general nature and history of miscellaneous recurring items, and available reference sources.		Same as PD No. 03264N.
Initiates personnel actions as appropriate.		
Maintains control of authorized positions within the Branch.		Establishes and maintains the supervisor's personal file of correspondence and documents concerning subordinate personnel, effectiveness reports and similar subjects. Safeguards confidential material. Establishes and revises files to meet current needs, removing outdated items.
	Prepares various reports (e.g., Technical Time Report, . . . etc.).	Prepares Travel Expenditure Report.
	Orders supplies.	Orders and replenishes supplies.

Safeguards, records, and transfers any money, money orders, or checks received in the mail.	
Composes a variety of non-technical correspondence such as answers to requests from taxpayers, notices to agents, memoranda on transfer of cases to other districts, etc.	Searches files for information to be used in replies or requests information from others. If information is readily available, composes replies in the personal style of the supervisor.
Receives incoming cases, reviews examination record cards to assure correctness, assures that incorrect code activities are corrected in the computer, assigns cases using examination record card or as directed by supervisor, and maintains status control of cases.	Maintains control of returns in inventory and statute controls. Reviews AIMS records for accuracy and troubleshoots any problems.
Analyzes Revenue Agents' . . . reports to extract information necessary to complete examination record card; checks to ensure that attachments are correct; reconciles inconsistencies or omissions with the agents. . .	
When supervisor is Director's Representative, performs additional duties such as coordinating administrative and housekeeping functions; coordinating approval of supervisor's speeches; relaying requests for speakers; typing administrative reports, maintaining reference library; arranging for conferences; answering general employment questions; etc.	Provides clerical support for EEO reports. Updates bulletin boards, processes administrative bills.

Performs a variety of clerical, typing, and stenographic duties for a group of . . . Revenue Agents . . . engaged in examinations of tax returns.	
Performs other duties as required.	As the supervisor's designee, records time and leave information for the supervisor and his subordinates.
	Implements various security measures (e.g., ensures that all cabinets are secure at close of business, ensures that high-security items are safeguarded according to protective point values, etc.).
	Initiates on-the-job visitation forms and status reports resulting from supervisor's visits.
	When supervisor is Large Case Manager, files and keeps current the large case historical files as well as the current working files for the supervisor; clips information pertaining to the large cases from the Wall Street Journal; etc.
	Advises the supervisor of important office matters arising during the supervisor's absence which might otherwise be overlooked, and brings the supervisor' attention to significant items in reports, files, and correspondence

Mr. Chairman, and distinguished members of the Subcommittee:

I am Vincent L. Connery, National President of the National Treasury Employees Union. Our union is the exclusive representative of over 115,000 Federal workers, including all employees of the U.S. Customs Service.

We are very pleased to appear before you today to discuss the budget authorization of the U.S. Customs Service for Fiscal Year 1981. We feel it is imperative that the Subcommittee hear a perspective on the Customs budget for FY 1981 that is different and, we believe, more realistic than that presented to you by Commissioner Robert E. Chasen.

In his recent testimony before the Subcommittee on Trade of the House Ways and Means Committee, Mr. Chasen asked for a $7.7 million increase over the Customs FY 1980 budget for a total appropriation of $472 million. Recently, however, the Administration released its revised appropriations request which seeks only a $465.7 million budget for the U.S. Customs Service in FY 1981, an increase of only $1.4 million. The rapid growth in Customs' workload, which the Commissioner himself described as "phenomenal" and "astonishing," will effectively render this miniscule increase meaningless and result in a decrease in actual funding for the agency.

We are also very disheartened that the Commissioner has failed to request increased staffing for the Customs Service. In effect, this head of a revenue producing agency who claims to be able to return $20 to the U.S. Treasury for every $1 of appropriations is saying that his already beleaguered work force must be pressed even harder.

In recognition of the pressing need for more resources for the Customs Service, the House Subcommittee on Trade authorized an additional $5 million to be added to the Administration's original proposal, bringing Customs' budget to $477 million. In light of the totally unrealistic revised request set forth by the Administration, we urge this Subcommittee to carefully consider the evidence we will present here today and, at the very least, retain the full amount authorized by the Subcommittee on Trade.

As the representative of the Customs employees who must perform their duties under these adverse conditions, we believe that the Commissioner's position is contradictory and illogical. For years, we have appeared before the appropriations committees in both Houses of Congress to warn of the dire consequences that a policy of less resources to meet a growing workload will have in such important areas as the monitoring of quota goods and the interdiction of drugs, and other contraband.

We feel compelled to inform the Committee that the crisis in the Service which we foresaw last year, and which the Congress attempted unsuccessfully to meet, has come to pass. Customs has been placed in an increasingly perilous position by the budgets of present and past Administrations which have continually deprived the Service of the resources needed to accomplish its mission.

This can be seen not only in the statistics we will present to you today, but, more importantly, in human terms particularly in the near total demoralization of the dedicated Inspectional force. These men and women have been stretched to the breaking point by ever-increasing workloads and by the failure to replace even those Inspectors lost through attrition. The toll on the personal lives of our members is driven home daily in the messages received by our union.

We are mindful of the fact that less than a year ago the House Ways and Means Committee, in a perceptive report, stated that:

> "The Customs Service, which is faced with an increasing workload will be stretched thin in the coming months... . The Committee hopes that the Administration will provide more support for the Service in the years ahead, particularly in light of the fact that many Customs functions bring into the Treasury 5 to 7 times their cost. Increased financial support for the Customs Service may actually result in increased revenue for the Treasury."

Unfortunately, the FY 1981 budget submitted by the Administration does nothing to justify confidence in its willingness to provide the resources needed to carry out the Customs mission. The budget is a catastrophe, representing in real terms a $40.4 million reduction in resources from the previous year.

This Committee can either signal continued acquiescence to these disastrous policies of the Carter Administration, or it can mandate that the needed resources be provided. In his statement to the House Subcommittee on Trade on February 7, Commissioner Chasen stated flatly: "The proposed budget does not reflect increased resources for workload growth."

The choice is clear. If additional resources are required, Congress must take the responsibility for providing them.

We hope, in the remainder of this statement, to make a contribution to your examination of the Customs budget request for FY 1981. We will attempt to analyze the current state of the Customs Service in terms of workload, resources, and performance, and in the end propose an alternative Customs budget for FY 1981.

Workload

The growth of the Customs workload as international trade and travel expand each year may be seen in the following figures:

-- Between 1970 and 1979, the number of international air passenger arrivals grew at the rate of 11 percent a year, and is projected to grow at the same rate between 1979 and 1985.

-- In the two-year period, FY 1980-81, arrivals of individuals by air will increase by 24 percent over the level in FY 1979, a rate of 12 percent per year.

-- Between 1970 and 1978, the volume of U.S. imports grew at an average annual rate of 7.5 percent, and is projected to grow at the rate of 8.7 percent annually between 1978 and 1985.

-- In the two-year period, FY 1980-81, formal entries of merchandise will total approximately 9.1 million, a 10.2 percent increase over 1979. The percent increase for 1981 alone is estimated at 6.8 percent.

The Customs budget for FY 1981, however, directs no additional resources to accommodate this growth in workload. As a result, the agency will be hard pressed to provide necessary services to the traveling public and international business community, protect the collection of revenue, safeguard against the entry of drugs, and enforce the trade regulations which protect the American economy and worker. Instead, the Commissioner states that the Service will cope with this additional workload by increasing productivity.

By making such a statement, the Commissioner is seeking to convince this Subcommittee that by simply shifting personnel or using them more efficiently the problems of enforcement will be solved. We believe that such a band-aid approach to a critical wound will not stand up under scrutiny when all specifics are considered:

-- First, the Commissioner claims that the Service has been able to redirect 200 positions from Headquarters to "on-the-line" activities, and is now broadening this reorganization to cover regional headquarters. It should be noted that the Commissioner took credit for this staff savings in FY 1980, and cannot accurately count it again in FY 1981.

The budget submission shows no more than 30 spaces to be saved in this manner in FY 1981.

-- Second, the Commissioner states that the Service is adopting "innovative alternatives for processing workload" by expanding the use of the Citizens By-pass/One-Stop concept of passenger clearance; by implementing the Customs Accelerated Passenger Inspection System (CAPIS) and by evaluating the Accelerated Cargo Clearance and Entry Processing Test (ACCEPT) method for inspection and clearance of cargo.

With respect to these items, we wish to note that Citizens By-pass/One-Stop concept allows a U.S. citizen traveling on a U.S. passport to bypass Immigration and go straight to Customs. This procedure imposes on the Inspector the additional duty of detecting aliens traveling with a false U.S. passport, and may actually increase the time required for processing passengers.

The Commissioner is also placing reliance for faster passenger clearance on CAPIS, or Customs Accelerated Passenger Inspection System. Under this system, only certain passengers are selected for Customs inspection, and the remainder are waved through. We have as yet seen no evaluation of this procedure, but there is an obvious danger of reduced enforcement, fewer seizures of contraband and drugs and less detection of illegal aliens.

There are equally serious problems with the ACCEPT system of cargo clearance, in which the shipments of certain designated "low-risk" importers are not physically inspected. As the identification of these importers becomes known, there is a clear hazard of loss of enforcement. It is certainly not beyond the ingenuity of smugglers to devise methods to circumvent this system.

The Commissioner states that the ACCEPT program will be evaluated by the end of the current fiscal year. In the meantime, it is clear that this system is still in the test phase and is not ready for adoption service-wide. How the Commissioner expects to get a 6.8 percent increase in productivity of cargo processing from this program in FY 1981, as he claims, remains a mystery to us.

We have always supported reasonable efforts to increase the efficiency of the Customs Service, but we urge this Subcommittee to examine carefully the Commissioner's claim of being able to meet the rapid growth in workload simply through increased productivity. This claim is based on flimsy evidence, and will not survive close examination. The Administration is simply gambling that it will get by another year--a gamble made at the expense of the taxpayer, the traveling public, and the American economy.

Resources

We would like to turn now to the resources Customs has been provided to accomplish its workload in recent years, beginning with the last four budgets submitted by the Carter Administration. Table 1 at the end of our prepared statement shows the budgetary increases in relation to the rate of inflation.

Note the .3 percent increase in total appropriations and obligations proposed in the revised FY 1981 budget. Given the present inflation rate of 13 percent, this represents a real decrease in the resources available to Customs of approximately $60 million. Even on the most conservative assumption that the inflation rate in 1981 will drop to 7 percent, there would still be a decrease in real resources of $31 million.

Basically, Mr. Chairman, we are asked in all seriousness to accept the following picture. First, the Commissioner tells us that workload will increase 7-12 percent in FY 1981, but this will be accommodated through increased productivity. Then he submits a revised budget that cuts available resources by 9-15 percent. In other words, we are seriously expected to believe that this magical factor--productivity--will actually rise between 16-27 percent to accommodate both the increased workload and the decreased resources.

As can be seen in Table 1, the Administration's 1981 budget of $465.7 million is vastly understated. The budget should be on the order of $496 million if a 7 percent inflation rate is assumed, and $506 million if a 9 percent inflation rate is assumed. These amounts would simply maintain the 1980 level of funding for the Customs Service in terms of real resources.

Mr. Chairman, we also call your attention to Table 2 at the end of our prepared statement. This shows the Customs personnel picture since 1972 with regard to total employment and the number of Customs Inspectors. The table clearly demonstrates a reduction in both categories for the current year and in FY 1981. Moreover, the average number of Inspectors at the end of FY 1980 will have fallen virtually to the same level as six years earlier despite a 50 percent increase in workload during the same time frame.

Looking to 1981, at first glance it appears from the budget tables that the Administration is prepared to increase the average number of Inspectors by 165 in that year. But, upon a closer examination, even this apparent increase begins to fade.

First, the increase is footnoted with the statement that the Customs Service will have the option to fill 152 of these 165 spaces with either full or part-time employees. Everyone knows that part-time employees are accounted for separately, and are not included in the number of permanent positions in the Inspectional force.

In addition, part-time employees do not have the training and skills of permanent Customs Inspectors. We would recommend that this Subcommittee obtain clarification as to whether it is the Commissioner's intention to hire 165 permanent Customs Inspectors, or 13 Inspectors and 152 part-time personnel. If the budget is intended to fund 165 additional Inspector positions, then it should say so. If these are to be part-time personnel, Congress should be so informed so that it may maintain oversight of the full-time/part-time mix of the Inspectional workforce. The Administration's revised budget does nothing to clarify this problem, but, given the drastic nature of the cutbacks contained therein, we fear that the confusion will only be exacerbated.

Even assuming that the Customs Service fields these 165 Inspectors, where do we stand? First, the number of Inspectors has fallen from 4174 in 1979 to 4083 in 1980, a drop of 91 positions. Adding back 165 slots yields a net gain of 74 Inspectors. Nevertheless, at the end of FY 1981, the Inspectional force will still be 151 positions short of the 1978 levels.

In summary, the resources available to the Customs Service have been decreasing due to inflation and the Administration's severe cutbacks in personnel. Combining these factors with the rapidly growing workload, one of two things must happen: either productivity must rise beyond any reasonable expectation or the Customs Service will be stretched to a point where enforcement will collapse.

Performance

In light of the evidence we have presented, it is useful to examine how well Customs is doing its job under the present difficult circumstances.

First, as the Ways & Means Committee has pointed out, Customs is presently inspecting fully only one percent of all containerized shipments despite tests showing that increased inspections would result in significant increases in revenue. Containerized shipments now account for 70 percent of all seaborne cargo, and the number of ocean vessel arrivals now stands at approximately 200,000 per year. In the future, the Customs Service will inspect even less than one percent, unless additional Inspectors are provided as workload grows.

Second, the congestion and delays at our airports was amply documented before Congress last year by the Air Transport Association. Today the situation, if anything, has worsened. Moreover, on all too many occasions, enforcement is simply being abandoned to clear the backlog of passengers.

Third, except for cocaine, the number of narcotics seizures is declining, as shown in the following table:

NUMBER OF CUSTOMS NARCOTICS SEIZURES

	1977	1978	1979
Heroin	245	181	172
Cocaine	1025	865	1247
Hasish and Marijuana	21,225	17,842	16,656
Totals	22,495	18,888	17,075

Because of a lack of adequate resources, throughout the past year Customs management has sought to reduce or to eliminate necessary law enforcement functions.

For example, through the implementation of a Manual Supplement, the Commissioner attempts to severely curtail the gauging of oil and oil product imports by Customs Inspectors. This action was only reversed after an outcry by Congress and the public. We are pleased to say that this important problem appears to be nearing resolution, and that Inspectors will continue to perform this vital function.

At a time when our nation is critically dependent on foreign oil, we believe that the attempt to eliminate gauging was a clear signal that Customs is unable to perform even crucial enforcement functions with its present resources. We are very concerned that unless Congress takes positive action now, we will see other necessary responsibilities diminished or eliminated entirely. Without a significant increase in funding and personnel levels, the once proud and effective U.S. Customs Service will be reduced to a shell of its former strength, unable to fulfill its vital missions.

Inspectional Overtime

We were sorely distressed that during the Commissioner's appearance before the House Subcommittee on Trade, several members expressed what we believe to be undue concern about the overtime earnings of some Customs Inspectors. Unfortunately, over the past few years, Customs overtime has become an emotional issue which distracts attention from the real problems of reduced enforcement.

We cannot overemphasize the fact that the vast majority of the overtime earned by Customs Inspectors is not paid by the taxpayers but by the carriers who demand immediate inspectional service upon arrival. In 1911, Congress mandated that the taxpaying public should not bear the cost of providing round-the-clock clearance to carriers but that the Customs Service should be reimbursed for this service. In addition, Congress provided that Inspectors subject to callback at any hour of the day or night should be compensated at a fair rate for this hardship - a rate equivalent to double time.

For nearly 70 years, the law has stood and proved to be an equitable and workable system. Carriers have been able to obtain prompt clearance and the American public has not been forced to pay the bill through appropriated funds. Nor does the law "stick" the business community with excessive charges, as some have suggested. Rather, it requires that segment of the community which demands special service from the government to pay for that service. We might add that the carriers obtain overtime service from Customs Inspectors at a rate of pay equal to or less than that received by the majority of private sector workers at our nation's ports.

We believe that the issue of Customs Inspector overtime earnings must be placed in perspective. First, we would like to call your attention to Table 3 which is attached to our prepared statement. This chart was taken from a Customs Service study. You will note immediately from the chart that Customs Inspectional overtime did not begin to increase more rapidly than base salary until after 1975. You will also note that, even after 1975, the rise in Customs Inspectional overtime was not out of line with the increase in total Customs obligations. Many critics like to point the finger at inspectional overtime, and frequently forget that base salary and total obligations also have been increasing.

Next, we would like to direct your attention to Table 4 which is also taken from the same Customs study. In a sense, this chart summarizes what we have been talking about today, for it puts together workload and resources. Workload is shown by the two lines that chart the value of U.S. imports, and the number of overseas air passenger arrivals. Resources are shown by the two lines which track the number of Customs Inspectors and the value of inspectional overtime. You will note that since 1975 the number of Customs Inspectors has either declined or held steady. You will also note that, starting in 1975, air passenger arrivals began to rise and there was a sharp increase in merchandise imports. Is there any doubt why Inspectional overtime has been going up? To quote from the Customs study:

> "Two factors, therefore, appear to be contributing to the rise in inspectional overtime payment: (1) the rapid increase in the value of U.S.imports in the last decade; and (2) the proportionally smaller growth in the number of Customs inspectors."

We agree with this statement as should any fair-minded person. However, in examining the FY 1981 budget submission, we hope that the members of this Subcommittee will not overlook the fact that overtime payments are a resource just like Inspectors are a resource. As long as the agency is not provided adequate Inspectional personnel it is futile to rail against overtime, for you are cutting into a resource needed to get the job done. This is why our union has always considered the attack on Customs overtime, in the face of a critical shortage of Inspectors, to be fundamentally misguided.

In viewing overtime as a resource, it is easier to appreciate the significance of the fact that 73 percent of Inspectional overtime is compensated by the carriers that require services of the Inspector. Fully 73 percent of the payment for this valuable resource -- the overtime services needed to enforce the law, protect the revenue, and otherwise discharge the Customs mission -- is not borne by the taxpayer but by the parties in interest.

A practical example of what can happen when the resource of Inspectional overtime is misused is presently unfolding in the Customs Service. Last year, the Subcommittee on Treasury, Postal Service and General Government of the House Appropriations Committee decided to restrict Customs Inspectors' overtime by placing a "cap" on such earnings. The full Committee - and eventually the House - approved limiting an Inspector's overtime to 100 percent of his/her base pay.

The Senate, meanwhile, approved its own, more restrictive version of the cap by mandating in its FY 1980 Treasury Appropriations bill a $20,000 cap on overtime earnings. The Conference Committee subsequently adopted the more stringent Senate provision with a non-binding recommendation that the FY 1981 cap be lowered to $15,000.

We opposed the imposition of any limitation on overtime earnings. As we have pointed out, overtime is a resource utilized by Customs management and the carriers. Inspectors do not set their own overtime hours, nor are they given a choice as to whether or not to accept overtime assignments.

The House and Senate, however, failed to consider these factors in enacting these caps. As a result, at several ports in our country there exists a distinct possibility that, as the end of the fiscal year approaches, the entire Inspectional work force, including supervisors, will have reached the statutory earnings limit due to heavy workload. In such cases, no qualified personnel will be available to perform Inspectional services.

To register the effects of the cap, we asked our Customs Chapter Presidents to tell us how many Inspectors at their installations made $5000 or more in overtime during the first quarter of FY 1980. For projection purposes, we assumed that these figures would give us a reasonable estimate of how many Inspectors would reach the $20,000 limit before the end of the fiscal year. The following is a portion of the letter we received from our members in Port Arthur, along the Texas-Mexico border:

"We are staffed in the Port Arthur office with eight Inspectors including the supervisory Inspector. All of us have exceeded the $5,000 you mention. The range is from $5,309 (low) to $9,580 (high)... Region VI /the regional headquarters for that part of the country/ has refused to replace any of the five Inspectors we have lost in the past year (retirement, transfer, etc.) even though our workload has increased considerably. We cover an area over 100 miles in radius including Beaumont, Orange, Port Arthur and Sabine, Texas."

Another Customs office that may not be able to offer any overtime services later this year is Las Vegas, Nevada. All of the Inspectors there have already earned over $5,000 for the quarter. One of the Inspectors whose overtime compensation exceeds the quarterly cap is the Port Director. In Houston, Texas, 23 of the 75 Inspectors, or about 30 percent of the workforce, have earned more than $5,000 in overtime. Four of the 23 are supervisors; which equals about 40 percent of the supervisory force at Houston.

In the Los Angeles, California seaport, 13 of 83 Inspectors, or 15.6 percent, have exceeded the $5,000 quarterly figure. One of the 13 made $8,360 during the three-month period. Because of the volume of work in the Los Angeles area, these Inspectors may be called to work at either the airport or the harbor, depending upon where the need is. Obviously, this creates a grave hardship on Inspectors, some of whom may have to travel, more than 150 miles round-trip for an overtime assignment.

Minneapolis/St.Paul, Minnesota, the Twin Cities, historically one of the most grueling airports at which a Customs Inspector must work, has "solved" the "overtime problem" by using part-time Inspectors. However, these part-time personnel are not obligated to work when called upon to do so, as are permanent Customs Inspectors. If they do not show up for an assignment, a full-time Inspector must be called anyway. These circumstances cause even more disruption in the lives of the permanent Inspectors who cannot be assured of spending any evenings or holidays with their families, since they can always be required to return to work if the part-time employee refuses an overtime assignment.

John F. Kennedy Airport in New York is another of the nation's busiest facilities. So far, however, only four of the 340 Inspectors assigned to JFK have reached or exceeded the $5,000 cap for the quarter. During the last fiscal year, 45 Inspectors made $20,000 or more. One-third of that number were supervisors.

At JFK, Customs management has negotiated a memorandum of understanding with the union stipulating that the "performance of assigned overtime is a condition of employment" and setting forth, in eight single-spaced pages, the rules concerning overtime. Any failure or refusal to work overtime may be punished. As we were told by the Chapter President, "At JFK airport, management has consistently tried to force employees to work more overtime in response to the Congressional cap. While the cap may limit the earnings of approximately 20 Inspectors at JFK, it will most certainly increase over 100 Inspectors' overtime earnings."

Recently, we were informed that Customs Inspectors in Philadelphia are being asked to volunteer for a temporary 60-day detail to Miami International Airport, presumably because the heavy workload in Miami is causing numerous personnel there to approach the overtime earnings cap. This solution, however, is administratively impractical. Because the government is required to pay travel and per diem expenses to Federal workers on detail, the temporary assignment will cost the taxpayer money and have a negative impact on Customs' budget. In addition, as the overtime earnings of the detailed Inspectors increases in Miami, Philadelphia, another busy port,may experience similar problems near the end of the fiscal year.

We believe that the message delivered by our Chapter officers is clear. If present trends continue, numerous ports, including some of the nation's busiest, will be faced with an even greater crisis in enforcement. Coupled with the severe shortage of personnel, it is virtually certain that Customs will be unable to provide overtime service to the carriers by the end of the year. In addition, by forcing Inspectors to work overtime when they would rather spend their leisure time in other pursuits, the spirit of an already badly demoralized work force will be further shaken.

We are convinced that any arbitrary limitation on overtime earnings is foolish and counterproductive. We urge the Subcommittee to recommend that the present cap be abolished in FY 1981. At the very least, the $20,000 overtime limitation should be indexed to reflect the October pay adjustments and within-grade increases afforded Customs Inspectors. Without such an indexation mechanism, the number of Inspectors who reach the limitation will increase and an already critical enforcement problem will be exacerbated.

We sincerely hope that you examine the issue of inspectional overtime objectively and not succumb to the emotionalism that opponents of Customs seek to interject into this debate.

Conclusion and Recommendation

We realize, Mr. Chairman, that the Committee must proceed prudently, and what we are doing here today is the start of a process and not the conclusion. Nevertheless, we urge this Subcommittee to seriously consider preparation of an alternative budget for Customs. The crisis in the Service is deepening with each passing day, and it will not be long before the social costs from a collapse of enforcement will be keenly felt.

There is no hope in the Administration's budget as you have seen. Only strong, decisive action by this Subcommittee can prevent further crippling of the Customs Service. We urge you to make your submission to the budget committee a strong signal to the Congress and OMB that enough is enough, that this Committee intends to provide the resources where it finds that resources are replaced.

To assist you in this process, we would like to offer the following recommendations:

1. First, ensure that the budget provides an overall level of resources sufficient to offset anticipated inflation. Again referring to Table 1, this will require total budget authority for FY 1981 of $497 million if 7 percent inflation is assumed, and $506 million if 9 percent inflation is assumed.

2. Starting from this baseline budget, provide the resources needed to achieve a buildup of the Customs Inspectional force.

Basically, the Subcommittee should compute the workload growth of the past 5 years and the projected growth over the next 5 years. The number of Inspector positions added should reflect the increase in workload. These additional personnel will obviate the need for an overtime cap since the increase in the number of Inspectors hired will decrease the amount of overtime earned by each.

Data provided by the Customs Service indicates that the agency's workload will increase at an average rate of approximately 9 percent per year. Using this figure, we estimate that roughly 350 positions should be added in FY 1981 at a direct personnel cost of $7.5 million. If indirect personnel costs such as training are added, this brings the baseline budget, assuming 9 percent inflation, up to approximately $516 million for FY 1981.

3. Based upon the above considerations, we recommend that you appropriate $516 million for FY 1981 budget authority for the Customs Service. At a minimum, the additional $5 million above the original Administration budget proposal should be retained.

4. Lastly, we recommend that the Committee report signal clearly to OMB the Committee's intention to propose an alternative budget on the order described, and invite the Administration's views on such budget.

In conclusion, we would like to emphasize our deep appreciation for the interest this Subcommittee has shown in the U. S. Customs Service and its employees. We are confident that in the weeks ahead the Subcommittee will take all steps necessary to ensure that the Customs Service remains a strong, effective law enforcement agency.

Mr. Chairman, this completes my prepared statement. If there are any questions, my colleagues and I will be happy to answer them at this time.

Table 1. Annual Change in Customs Resources and Inflation

FY 1978-1981

(Dollars in thousands, Appropriated funds only)

	Personnel Compensation	% Change	Total Appropriations	% Change	Total Obligations	% Change	GNP Implicit Price Deflator*1972=100	% Change
1978	278,381		405,474		400,591		153.45	
1979	298,642	+7.3	444,059	+9.5	431,836	+7.8	167.20	+9
1980	324,546	+8.7	464,339	+4.6	464,339	+7.5		+8(EST)
1981 (original)	325,382	+0.26	472,000	+1.6	472,000	+1.6		+7.9(ES
1981 (revised)	-	-	465,700	+ .3	465,700	+ .3		
Required in FY 81 to keep pace with:								
7% Inflation	347,264	+7	496,843	+7	496,843			
9% Inflation	353,755	+9	506,130	+9	506,130			

Source: (1) U.S. Treasury Department Congressional Budget Submission for FY 1981, p. 21
(2) Federal Reserve System for Price Data

* Other indexes of inflation performed as follows in 1979: The Consumer Price Index rose 13.3 percent and Producer Prices rose 14.7 percent.

Table 2. Number of Customs Inspectors and Total Employment

FY 1972-1981

	Total Employment (Average Positions)	Number of Customs Inspectors	Indexes: 1972=100 Total Employment	Customs Inspectors
1972	11,118	3,754	100	100
1973	11,772	3,700	106	99
1974	11,878	4,000	107	106
1975	13,076	4,400	118	117
1976	13,380	4,300	120	114
1977	13,228	4,300	119	114
1978	13,856	4,399	125	117
1979	14,061	4,176	126	111
1980(EST)	13,643	4,083	123	109
1981(EST)	13,597	4,268	122	113

Sources: (1) U.S. Treasury Department Congressional Budget Submission for FY 1981, p. 21.

(2) U.S. Customs Service, The Issue of Customs Inspectional Overtime, p. 7 and Figure 2.

SUMMARY OF STATEMENT

Mr. CONNERY. Thank you, Mr. Chairman. We are pleased to appear once again to discuss the appropriations request for the Internal Revenue Service and the U.S. Customs Service.

With me today, on my extreme left, is Mr. Richard Robinson, Assistant Counsel; to his right, Mr. Jerry Klepner, our union's Director of Legislation; and to my right, Mr. George Sam, President of the NTEU, Austin, Tex.

We have submitted our statement on the fiscal year 1981 appropriations for IRS and the Customs Service, and we ask this be included in the record of these hearings and urge the careful consideration of the issues we raise in our presentation. For the sake of brevity, we will summarize.

FISCAL YEAR 1981 IRS BUDGET REQUEST

With regard to IRS, we were somewhat encouraged when the administration requested in its first budget submission an additional 1,413 average positions and a total authorization of $2,385,078,000 for fiscal year 1981. Still, these requests reflected only a 1.6-percent increase in staff and a 3-percent increase in funding. We seriously doubted that these small amounts were sufficient to offset the increasing demands that will be placed upon the IRS in these difficult times.

The problem faced by the IRS will be heightened, however, as a result of the revised fiscal year 1981 budget submitted by the administration. In their second appropriations request, the President is seeking to cut $25 million in badly needed funds from the IRS budget. This request represents only a 2-percent increase in funding and less than 1 percent in additional personnel. We believe that in our Nation's present economic situation such reductions totally belie logic and common sense.

Each major area of IRS activity will suffer as a result of the administration's budget request.

EXAMINATIONS AND APPEALS

For example, the Examination and Appeals Division, which is responsible for the examination of taxpayer returns and the administrative settlement of taxpayer appeals of audit findings, the administration's initial request called for an increase of 170 average positions over fiscal year 1980 levels. With this additional staffing, the IRS claims that it will examine approximately 62,000 more returns in fiscal year 1981 and, as a result, tax assessments will reach $6.3 billion, up $651 million from the current fiscal year. The revised IRS budget trims over $10 million from the Examination and Appeals Division and provides for an unspecified number of staff reductions. We have serious doubts that the IRS will be able to accomplish these ambitious goals with the scant resources requested by the administration.

For example, the IRS budget submission claims that increased attention will be devoted to more complex audits which yield higher returns. Yet, in the initial figures presented by the administration, only 62 new revenue agent positions will be created. Since revenue agents conduct the most complicated audits, we do not believe that an 8-percent increase in recovered taxes can be obtained with an increase of only one-half of 1 percent, or less, in a key part of the work force responsible for its accomplishment.

AUDIT QUALITY

In a report on audit quality, the General Accounting Office concurred with our contentions. Production pressure affects the current loss of voluntary compliance. For this division, which is charged with collecting unpaid accounts, this year the administration has requested 1,740 positions and $32.3 million. While we certainly support increased funding for this vital division, we still dispute the IRS contention it will solve the problem or enable this division to increase its output by 25 percent.

In summary, we believe that the major question in this fiscal year is whether IRS will be strengthened to enable it to perform a meaningful role in meeting the economic crisis now facing our country or whether timidity and lack of ingenuity will prevail for still another year.

U.S. CUSTOMS SERVICE BUDGET REQUEST

Mr. Chairman, we would like now to turn to our concerns on the funding for the U.S. Customs Service for fiscal year 1981. We feel it is imperative that the subcommittee hear a perspective on the customs budget for fiscal year 1981 that is different and, we believe, more realistic than that presented to you by Commissioner Chasen.

In his recent testimony before the Subcommittee on Trade of the House Ways and Means Committee, Mr. Chasen asked for a $7.7 million increase over the customs' fiscal year 1980 budget for a total appropriation of $472 million. Recently, however, the administration released its revised appropriations request which seeks only a $465.7

million budget for the U.S. Customs Service in fiscal year 1981, an increase of only $1.4 million. The rapid growth in customs' workload, which the Commissioner himself described as phenomenal and astonishing, will effectively render this miniscule increase meaningless and result in a decrease in actual funding for the agency.

In recognition of the pressing need for more resources for the Customs Service, the House Subcommittee on Trade authorized an additional $5 million to be added to the administration's original proposal, bringing customs' budget to $477 million. In light of the totally unrealistic revised request set forth by the administration, we urge this subcommittee to carefully consider the evidence we will present here today and, at the very least, retain the full amount authorized by the Subcommittee on Trade.

INSPECTOR OVERTIME

We also call the subcommittee's attention to that portion of our detailed statement that deals with inspection overtime. The subject of customs inspectors' overtime earnings has unfortunately become a highly emotional issue which distracts from the real problems of reduced enforcement.

We cannot overemphasize the fact that the vast majority of the overtime earned by customs inspectors is not paid by the taxpayers but by the carriers who demand immediate inspectional service upon arrival. As shown in our statement, we believe the emphasis is clear that inspector overtime is a resource utilized by the agency and carriers themselves to facilitate the clearance of passengers and cargo. Even the customs' estimated increase in overtime is due to the rapid rise in imports of international travelers and a decrease in the number of inspectors. This will only be exacerbated by the loss of 22 inspectors in the administration's revised budget, as long as the agency is not provided adequate inspection personnel for resources to get the job done.

In summary, we believe that the adoption of the proposed fiscal budget would be disastrous for an already weakened Customs Service. Only strong, decisive action by this subcommittee can prevent further crippling of the agency. In our statement we estimate the increase in workload and anticipated inflation will result in the need for a fiscal year 1981 budget of $516 million. We urge this subcommittee to consider providing such funding for the vital role played. At a minimum, we urge you retain the $477 million approved by the House Ways and Means Committee.

In conclusion, we would like to emphasize our deep appreciation for the interest this subcommittee has shown in the Internal Revenue Service and U.S. Customs Service. We have confidence the subcommittee will take all steps necessary to insure that these agencies remain strong.

Mr. Chairman, this concludes my statement. If there are any questions, my colleagues and I will be happy to try to answer them at this time.

QUESTIONS BY SENATOR DECONCINI

Senator DECONCINI. Mr. Connery, I happen to be very sympathetic to the need for more customs and IRS employees, for a number of reasons. But I have to pose the same question to you as I did the witness before. I don't know if your organization or you, personally, think we should balance the budget. If you do, and your members think so, where would you suggest we make the cuts in order to provide the addition you are suggesting?

Mr. CONNERY. We are suggesting, Mr. Chairman, with regard to these two agencies, the Internal Revenue Service and the U.S. Customs Service, that rather than cuts they should be given additional moneys in order to produce. They are the only two revenue-producing agencies that I know of in the Government. They produce what the Government has to spend. And if they get the needed employment figures, this will produce far in excess of what they are being cut.

Senator DECONCINI. But to do that we have to reduce someplace else until they are on line producing money.

Mr. CONNERY. I don't see it that way, sir. The fact is that IRS is only examining considerably less than 2 percent.

Senator DECONCINI. I understand. If you are going to add people, you have to pay them now, and you may not collect the money for some time. Where do we reduce the Federal expenditures to add the people now even though we are going to collect the money later?

Mr. KLEPNER. I think the point is by adding people you will, in fact, generate more money.

Senator DECONCINI. I understand, but not instantly.

IRS COLLECTION OF TAXES

Mr. KLEPNER. I think you will within the upcoming fiscal year. GAO issued a report that the IRS has not collected $2 billion a year because of nonfilers. Now the IRS does not have the personnel in the collection division to go after that group of the population. If they are given the resources in the upcoming fiscal year, they can make an effort to go after nonfilers, and as a result more money will be generated for the budget.

Senator DECONCINI. But do you agree you have to first spend the money to hire the people, find the place for them to be housed and give them the equipment and backup information before they can go after anybody as far as doing more audits or doing more of their work? Once they start to do that, somewhere down the line you are going to start collecting the amount of money that the GAO suggests. So if you agree that there is some time lapse, you are talking about spending deficit dollars to get that income. Where do you reduce the Federal budget someplace else in order to add adequate personnel?

Mr. KLEPNER. I think we disagree. One point on that is the timelag itself. I don't believe the timelag between the hiring of the personnel and the collection of additional revenue is all that great. I think when you are looking at the budget, you have to look at the revenue end as well as the expenditure end. What we are saying, in looking at the revenue end, the best way to go about it is providing funds to both customs and IRS to get the job done. Plus, it returns $20 for every dollar spent on personnel.

Senator DeConcini. I know that, and I agree there would be a greater amount of income coming in. But I can't agree by adding these people you are going to instantly have this income. I think quite the contrary. With the experience I have had in law enforcement, when you add people, it takes a while to get them out in the field doing the work to get the revenue up.

Mr. Klepner. It takes a short time. But I think a beginning has to be made somewhere. The IRS audit coverage should be maintained at 2.4 percent by direction of Congress. It has slipped to about 2 percent. The Commissioner has stated it would take 2,300 additional revenue agents to reach the 2.4 percent level. If the start isn't made sometime, then that revenue will remain uncollected, those audits will not be conducted, and the revenue-producing part of the budget will continue to suffer.

Senator DeConcini. OK, thank you, gentlemen.

Administrative Law Section of the American Bar Association

STATEMENT OF EDWIN F. RAINS, CHAIRMAN, CUSTOMS COMMITTEE, ADMINISTRATIVE LAW SECTION, AMERICAN BAR ASSOCIATION

Senator DeConcini. Our next witness will be Mr. Edwin F. Rains of the Customs Committee, Administrative Law Section, the American Bar Association.

Mr. Rains, your full statement will be printed in the record. If you would give us an oral summary and restrict that to 5 minutes, we would appreciate it, sir.

[The statement follows:]

STATEMENT OF EDWIN F. RAINS

My name is Edwin F. Rains. I am the Chairman of the Customs Committee of the Administrative Law Section of the American Bar Association.

The purpose of our testimony today is to urge that your Committee take appropriate action to require the United States Customs Service to increase the legal manpower in the Office of Regulations and Rulings at Customs Headquarters in order that that office may be enabled to play its proper role in adjudication and rulemaking and to handle such matters more expeditiously.

You will recall that during the Spring of 1977 the Association of the Customs Bar testified to the same effect. It testified that the Office of Regulations and Rulings was seriously understaffed, and it asked your Committee to require the United States Customs Service to devote more manpower at its Headquarters for the use of the Office of Regulations and Rulings in the process of adjudication and rulemaking.

The Association pointed out that although, during the immediately preceding ten year period, Customs Headquarters staffing had increased well over three fold there had been no comparable increase in the number of lawyers dealing with rulemaking and adjudication. Indeed, the proportion of such lawyers to total Headquarters personnel had declined from 22% to 12%.

The Senate Committee on Appropriations took note of this testimony and in its Report (No. 95-267, 95th Congress, 1st Session) stated.

> "***the delays and backlogs referred to in the testimony are detrimental both to people dealing with the Customs Service and to the Customs Service itself. The Customs Service is requested to review the workload and staffing of the Office of Regulations and Rulings and advise the Committee of their findings by January 1, 1978."

The summary report which your Committee received from Customs focused upon only one aspect of the legal work of the Customs legal branch which is known as the Office of Regulations and Rulings. Customs' study concentrated on what it termed the "Public Inquiry Program". The summary of its study which Customs submitted to your Committee recommended an increase of 54 positions for the "Public Inquiry Program"; it was silent on the need for additional attorneys to handle Fines, Penalties and Forfeitures matters, Internal Advice matters, Freedom of Information and Privacy matters, the development and publication of regulations, general tariff and trade matters, protest review matters, legislative matters, and litigation. The summary was also silent on the fact that although it recommended 54 additional positions for the public information program, the basic Task Force study, which it purported to summarize, indicated that the optimum increase should be 116 additional positions.

Despite its own study showing a real need for additional legal positions, Customs has recently reduced the number of such positions and appears to have further reductions planned. Your Committee may not be aware of the fact that during the past year the Customs Service has actually reduced the number of attorneys in its Office of Regulations and Rulings. A small number of position transfers were properly made because the Office of Regulations and Rulings lost its functions relating to antidumping and countervailing duty matters. There can be no complaint about the loss of attorneys caused by this transfer. However, after that transfer, as of February 1979, 122 lawyers, including lawyers in supervisory positions, were functioning in the Office of Regulations and Rulings. In addition, there were five law clerks whose positions were converted to legal positions as soon as the incumbents were admitted to the bar. By way of contrast, as of April 2, 1980, there were 87 lawyers, including supervisors, actually working in the Office of Regulations and Rulings.

The reduction of considerably more than 30 legal positions within one year, in the face of Customs advice to you, just two years ago, that it needed and planned to have additional legal staffing would seem to require some explanation on the part of the Customs Service. Apart from the question of the good faith of Customs in reducing of attorney positions after advising you that it planned to take just the opposite course, we must note that the actions which it has taken and which it is now contemplating, which involve non-lawyers performing essentially legal functions, will invariably increase the non-uniformity of future Customs legal interpretations and the error rate of those interpretations; increased litigation will be generated as a result of the new procedures that are apparently being put in place.

The Administrative Law Section of the American Bar Association, as far back as 1978, adopted a resolution which stated that it

> 1) Would view with extreme concern any action by the United States Customs Service which would diminish, hinder or limit legal review by lawyers within the United States Customs Service of issues raised with regard to the proper legal application of the Tariff Act including the Tariff Schedules of the United States, and
>
> 2) Endorses the United States Customs Service's existing procedures for centralized determination of legal principals and issues relating to the Tariff Act including those embodied in the procedure for Further Review of Protest and the Internal Advice Procedure and believes that it is important that these procedures be strengthened by the provision of additional resources for their implementation in an effective and expeditious manner by Customs legal staff.

We still adhere to that position. The actions of the Customs Service, reflected both in the reduction in the number of attorneys within the Office of Regulations and Rulings and in the efforts still being made to reassign even more legal functions away from the attorneys in that office to non-legal personnel in field locations, compels us to seek the support of this Committee.

We urge that the Senate Appropriations Subcommittee incorporate within its Report accompanying the fiscal 1981 budget appropriations for the U.S. Customs Service a specific direction to Customs that it not only refrain from diminishing the role of lawyers in adjudication, rulemaking and other matters involving the interpretation of law, but also that it increase the legal staff of the Office of Regulations and Rulings so that it may be utilized as the vehicle for the centralized legal determination of precedential decisions issued by the U.S. Customs Service. We urge, further, that your Committee take steps to insure that the Office of Regulations and Rulings be adequately staffed to perform its numerous other legal functions.

We trust that you will not tolerate the assignment of legal functions to non-lawyer personnel. Experience has shown that any short run benefits which are foreseen as justification for such moves are ultimately more than offset by increased delays and expense both for the government and the citizens involved. Like most Americans, we still believe that justice delayed is justice denied.

SUMMARY OF STATEMENT

Mr. RAINS. Thank you very much, Mr. Chairman.

I am here today on behalf of the Administrative Law Section of the American Bar Association. I am also authorized to say that I am speaking on behalf of the chairman of the standing Customs Commitee of the American Bar Association and of the chairman-designate of that committee.

I am here to urge that your committee take appropriate action to require the Customs Service to employ a suitable number of people in the Office of Regulation and Rules as lawyers in order that they may play their proper role in adjudication and in rulemaking.

This committee will recall that there was testimony presented to you in the spring of 1977 in which the Association of the Customs Bar stated that it was greatly concerned because of the lack of lawyers in the Customs Service and because of the delays encountered in adjudication and rulemaking actions. Your committee was sufficiently concerned about this matter that in your report that year you referred to the delays and backlogs and asked that a report be submitted to you.

Your request was taken seriously by the Customs Service. However, there were those in the Customs Service who, for whatever reason, chose to look upon your request as an opportunity to conclude that the jobs of adjudication and rulemaking performed by lawyers could be performed better by others than lawyers.

I take the view that if you want to build a bridge, you ought to use engineers, not managers or commodity specialists. I agree that there surely are some dumb lawyers and there are some very, very bright people who are not lawyers. However, I believe that when you are dealing with legal problems, you are better off putting those problems in the hands of lawyers than in those of nonlawyers.

As a result of the concern which was felt by people who deal with customs and its legal problems, the American Bar Association's Administrative Law Section considered this matter and adopted a resolution, which is set forth on page 4 of my formal statement. That resolution stated that it would view with extreme concern any action taken by the U.S. Customs Service which would diminish, hinder or limit legal review by lawyers, and it asked that the Customs Service's existing procedures for centralized determination of legal principles be continued in the Office of Regulations and Rulings and that a number of people be added so that these functions could be carried out effectively.

Possibly as a result of this, and possibly for other reasons, customs came back to this committee with a report that said 54 additional people should be added in the Office of Regulations and Rulings.

Senator DeConcini. And all of those should be lawyers?

Mr. Rains. I cannot say that.

Senator DeConcini. But in your opinion they should be?

Mr. Rains. In my opinion, of course they should be lawyers with adequate support staff. The optimum number stated in the underlying report, which I am not sure ever went to your committee, was that there should be an addition of 116 to the staff of the Office of Regulations and Rulings rather than the 54 that were mentioned in the summary report.

Senator DeConcini. How do you feel about the 54 number?

Mr. Rains. That number relates to an outdated situation, that of 1977 and 1978. I believe that today there is a large backlog that has been built up in the Office of Regulations and Rulings. What distresses me the most about this is that instead of the addition of lawyers the number has been reduced. Some lawyers were added after your committee addressed the problem. As of April 1979 there were 122 lawyers actually employed in the Office of Regulations and Rulings and there were five law clerks, whose positions were converted to attorney positions when the incumbents passed the bar. This made a total of 127. By February of this year that number had been reduced to 87.

The question of backlogs in the Office of Regulations and Rulings are documentable. Customs has computer printouts, which I am sure your committee could get if it wants them. Those printouts would show how many cases are assigned to how many lawyers and would show the degree of backlog. I would suggest that those printouts might make interesting reading for your committee.

I might add, also, that the question on which the Customs Service focused, after your committee asked for a report relating to customs legal staffing, was what the report called a "public information program." This program included the handling of certain rulings and responses to members of the public who write in and ask questions about what is the rate of duty on an article or how customs values merchandise, and so forth and so on. Most importantly customs' report did not address itself at all to many of the other functions which are performed by the Office of Regulations and Rulings, such as the handling of fines, penalties, forfeiture, litigation, ruling revision, or freedom of information matters.

This book in my hand is perhaps as illustrative a thing as I can bring before you. It contains the customs regulations. In 1965 customs was reorganized and it became necessary to rewrite the regulations. This body of material that I am pointing to is what has been rewritten. The remainder of the book, at least 50 percent of it, has not yet been revised after the passage of more than 14 years.

I have heard, and I can hardly give it credence, it may just be a rumor, that there is a proposal now floating around customs to remove the task of revising the regulations, consolidating them and brining them up to date, out of the hands of lawyers. The thought would be that lawyers are not needed for the revision of the regulations since it is only a kind of ministerial act. I think that is a view which you, as a lawyer, would not share.

I am not here asking for a larger budget for the Customs Service. I can't speak with any degree of knowledge on whether the budget request which has been submitted to you is adequate or inadequate. I am merely urging that the functions which should properly be performed by lawyers should be left with and be given to lawyers. I cannot believe that if those functions are trasnferred to others, that this will effect a savings for the Government. A savings would occur only if one assumes that the people to whom such functions would be transferred are not now fully occupied. I don't want to make that assumption, because I think they are actually working hard now. If new functions are transferred to them, those to whom the functions are transferred will either neglect their new or old functions or alternatively they will need new people to help them perform their increased responsibilities.

I think I have sufficiently summarized my statement, sir. If you have any questions, I would be delighted to try to answer them.

Senator DeConcini. Mr. Rains, thank you. You make a good and compelling argument. It may be my view because I am a lawyer, that if you draw legal documents or at least rules and regulations that deal with the law, that lawyers ought to be involved. I appreciate your statement.

Mr. Rains. Sir, I wasn't always a lawyer. I spent 7½ years as an administrator in the Customs Service. During that period I was the Deputy Commissioner of Customs. So I think I understand the other side of the picture as well.

Senator DeConcini. I think you do. Thank you.

COALITION OF LABOR UNION WOMEN

STATEMENT OF RUTH JORDAN, COALITION OF LABOR UNION WOMEN

Senator DECONCINI. Our next witness is Ms. Ruth Jordan from the Coalition of Labor Union Women.

Ms. Jordan, your full statment will be printed in the record if you would like to summarize.

[The statement follows:]

STATEMENT OF RUTH JORDAN

Mr. Chairman and members of the Appropriations subcommittee, my name is Ruth Jordan. I am testifying as a representative of the Coalition of Labor Union Women.

Thank you for the opportunity to testify on an issue which is of increasing concern to us both as women and trade unionists. The Coalition of Labor Union Women was formed five years ago by women and men from many collective bargaining organizations. We are primarily concerned with protecting the rights of working women both in their workplace and their unions.

Over the last year we have become aware that the rights of our members who work in public employment have become a special battleground for adherents of the so-called "right to life" position. At first this was true only for state employees. But now Representative Robert K. Dornan of California has announced, both on the floor of Congress and in outside publications, that he will introduce an amendment to the Treasury Appropriations bill that could limit health plans of Federal and Congressional employees so that the plans may not provide for abortion. We in CLUW consider the issue not one of pro-abortion or anti-abortion but one of employee rights and in some instances the right of free collective bargaining.

The Postal Reorganization Act provides that postal employees be covered by the National Labor Relations Act with full collective bargaining rights. To the extent that this proposed measure would put a clamp on what the employer might be able to offer at the bargaining table we consider such an amendment a serious interference with the right of collective bargaining.

The Civil Service Reform Act makes movement in the direction of fuller collective bargaining for other Federal employees. This kind of limitation imposed on the Office of Personnel Management is directly contrary to the goals of Congress which sought to develop an apolitical, professional federal service and also provide employees with organizational rights.

The money for the Office of Personnel Management is contained in the appropriation measure which you are considering. We anticipate an amendment that would state that none of the funds in your bill could be used to procure abortion services. The Office of Personnel

Management negotiates health coverage and pays a portion of the premiums for such services for some 9 million Americans--six million of whom are dependents. All could be affected by such an amendment. It is ironic that people who are concerned about "big government" would use their power over Federal workers to reach into their bedrooms and touch the lives of men and women who have no relationship with the Federal government at all, other than their marriage to an employee. Of course, the amendment may take some other form which we do not know about at this time.

We are also concerned about tampering with health plan benefits in a way that would interfere with a physician's prescribed course of treatment for a patient. At this moment, abortion is the issue. What other issue will be next? Perhaps psychiatric treatment will be considered "God-less" one day and stricken from the medical plans in the same way.

Within CLUW and of course, throughout the labor movement there are strong differences of opinion over abortion. CLUW's organizational position supports the right of women and families to make those decisions privately.

But whatever our position on this issue we are all united in our opposition to limiting employee benefits by decree. This becomes particularly dangerous where the employees are subject to special laws which limit their right to resist by striking.

We note that the form this restriction has taken in the States of Illinois, Massachusetts, North Dakota and Kentucky is to require employees to pay for a special abortion option in their health plans. Right now Federal employees may opt for a variety of plans, some of which provide for therapeutic abortion only, some for abortion and as in the case of the Georgetown Plan--flatly NO abortion. The family chooses those options best suited to it for the premium it wishes to pay. The government has gone to a great deal of trouble to assure freedom of choice in medical plans. We believe Congress should defend that course. Employee organization plans are one option offered to Federal employees. The plans are administered by officers elected by the union membership. They are assumed to reflect the benefits which union members want as part of their plan. The Dornan amendment is also objectionable from that standpoint. To prohibit the inclusion of abortion as a health plan benefit, or to strike it from the plan, would interfere with the independence of the democratic will of the membership.

On behalf of the thousands of union women who depend on you to preserve their rights as union members, as Federal employees and as private citizens, we urge you to resist these amendments.

HIGHLIGHTS OF STATEMENT

Ms. JORDAN. Thank you, Senator.

My name is Ruth Jordan. I am testifying as a representative of the Coalition of Labor Union Women. Just to let you know what that organization is, it was started about 5 years ago by the women and men from many different collective bargaining organizations, and we are primarily concerned with protecting the rights of working women, both in our workplace and unions.

Over the last year we have become aware that the rights of our members who work in public employment have become a special battleground for adherents of the Right to Life position. At first this was only true for State employees, but Robert Dornan has announced, both on the floor of Congress and in outside publications, that he will introduce on the floor an amendment to the Treasury appropriations bill that could limit health plans to Federal and congressional employees so that those plans may not provide for abortion. We, frankly, consider this issue not one of pro-abortion or anti-abortion, but one of employee rights, and in some instances the right of free collective bargaining, and we come to you over that issue.

The Postal Reorganization Act, for example, provides postal employees be covered by the National Labor Relations Act, with full collective bargaining rights. To the extent that this proposed measure would put a clamp on what the employer might be able to cover at the bargaining table, we consider such an amendment a serious interference with the right of collective bargaining.

The Civil Service Reform Act makes movement in the direction of fuller collective bargaining for other Federal employees. This kind of limitation imposed on the Office of Personnel Management is directly contrary to the will of Congress which sought to develop a positive professional Federal service and also provide employees with organizational rights. The money for the Office of Personnel Management is contained in the appropriations measure which you are considering, sir. We anticipate an amendment that would state that none of the funds in your bill could be used to procure abortion services.

The Office of Personnel Management, which you heard from yesterday, negotiates health coverage and pays a portion of the premium for such service for some 9 million Americans.

To us it is ironic that people who are concerned about big government would use their power or Federal work to reach into their bedrooms and touch the lives of men and women who have no relationship with the Federal Government other than the fact they are married to a Federal employee.

Of course, the amendment may take a form we don't know about at this time.

We are also concerned about tampering with health benefits in a way that would interfere with a physician's prescribed course of treatment. While abortion may be an issue of the moment, there may come a time when some other issue will be. Perhaps psychiatric treatment will be considered godless and stricken from medical coverage.

Throughout the labor unions there are strong differences of opinion over abortion. CLUW's organizational position supports the right of women and families to make these decisions privately. Many individuals have a different point of view. But whatever our position is on that issue, we are all united in our opposition to limiting employee benefits by decree. This becomes particularly dangerous in the case of Federal employees who are subject to special laws which limit their right to resist by striking. We note that the form this restriction has taken in the States of Illinois, Massachusetts, North Dakota, and Kentucky, is to require employees to pay for special abortion option in their health plans. Right now Federal employees may opt for a variety of plans, some of which provide for only therapeutic abortion, some for abortion, and, as in the case of the Georgetown University plan, flatly no abortion. The varieties of these options were mentioned to you, and you are aware of them. The family chooses those options best suited for the premium it wishes to pay. The Government has gone to a great deal of trouble to assure freedom of choice in medical plans. We believe Congress should defend that.

There are also 18 employee organization plans, and these have one option offered to employees. Those plans are administered by officers elected by union membership. They are assumed to reflect the benefits which union members want as part of their plan. And I called Mr. Nylan from the Postal Workers Union before coming over here, who told me they received many resolutions on the floor of their convention about what those plans should contain.

The Dornan amendment is also objectionable from that standpoint. To prohibit the inclusion of abortion as a health plan benefit, as striking it from the plan, would interfere with the democratic will of the membership.

Finally, on behalf of thousands of union women who depend on you to preserve their rights, and union members, Federal employees and private citizens, we urge you to resist those amendments.

Thank you, sir.

Senator DeConcini. Thank you very much.

NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS

STATEMENT OF JAMES M. HACKING, NATIONAL RETIRED TEACHERS ASSOCIATION

ACCOMPANIED BY LAURIE FIORI, LEGISLATIVE STAFF

Senator DECONCINI. Our next public witness will be Mr. James M. Hacking from the National Retired Teachers Association. Your prepared statement will be included in the record at this point.

[The statement follows:]

STATEMENT OF THE NATIONAL RETIRED TEACHERS ASSOCIATION AND AMERICAN ASSOCIATION OF RETIRED PERSONS

The National Retired Teachers Association and American Association of Retired Persons appreciate the opportunity to testify before the Treasury, Postal Service and General Government Appropriations Subcommittee concerning funding for the IRS Volunteer Income Tax Assistance (VITA) program and the Tax Counseling for the Elderly (TCE) program. Both of these programs are part of the IRS taxpayer educational activities.

Our Associations fully recognize that Congress and the Administration are firmly committed to balancing the budget. We strongly support this objective because we believe that inflation is the number one enemy of the elderly. At the same time, though, we believe that Congress must consider carefully the merits of each federal program. In some cases funding cutbacks are justified, especially for lower priority programs or those which have outlived their usefulness. Many programs should be continued at their present level for next year. In a limited number of cases, programs should be expanded, particularly those with a high cost-benefit ratio or potential for savings to government.

Our Associations believe that VITA and TCE meet both of these tests. Unfortunately, however, the Administration is proposing to reduce the overall appropriation for VITA and TCE by $500,000, from $2.3 million to $1.8 million. The Associations urge the Subcommittee to reject the Administration's proposal. We recommend that the Subcommittee approve a $2.5 million funding level to allow a modest expansion in the program. The need is clearly greater, but we are suggesting this figure because of the tight budgetary situation. We recommend that $1.25 million of this funding be allocated for TCE and $1.25 million be allocated for other VITA programs. We also believe that provision should be made for federal funding to permit sponsoring organizations adequate time for program development.

NEED FOR TAX COUNSELING ASSISTANCE

NRTA-AARP represent 12.6 million persons. Our members have repeatedly emphasized that tax counseling assistance is one of their priority needs. One important reason is that older Americans are frequently confronted with new, and sometimes complicated, tax rules when they retire. These problems oftentimes are intensified for elderly widows, who typically have little or no experience in preparing a tax return.

In recent years, Congress has enacted several provisions to ease the tax burden for older Americans, including the once-in-a-lifetime $100,000 capital gains exclusion for homeowners 55 years or older and the tax credit for the elderly. But these provisions are of little value unless elderly persons are aware of their existence. In addition, they must know how to make the appropriate computation in determining their tax savings, or to have someone to assist them if they cannot make the calculation on their own.

This is a major reason that NRTA-AARP established a Tax-Aide program in 1968. Today Tax-Aide has become a nationwide program that provides competent tax counseling and preparation services for older Americans. Elderly volunteers, trained by IRS, provide these services free of charge in a wide range of settings, including conveniently located community sites, senior centers, nursing homes, and at residences for the homebound. Tax-Aide is by far and away the largest of the TCE programs, and the new funding has allowed us to significantly expand our service to shut-ins, many of whom were referred to us by the IRS, and to isolated communities.

Nearly 11,500 to 12,000 counselors, coordinators, and others participated in the program during the past tax seasons. These individuals prepared approximately 400,000 federal returns. This is nearly four times the level that Tax-Aide counselors prepared five years ago.

The need, though, is clearly much greater. In 1977 -- the latest year that complete information is available -- more than 8 million persons 65 or older filed a Federal income tax return. Many of these individuals need help. And, it can be provided at a reasonable cost through the TCE and VITA programs, with important benefits for the IRS, older Americans, and our Nation.

BENEFIT TO IRS

TCE can be of great value to IRS because the IRS taxpayer service capabilities are limited by budgetary constraints. This is especially true now. Voluntary tax counselors help to fill the gap between the public need for assistance and the ability of the IRS to respond.

This occurred in Connecticut when several IRS satellite offices were closed because of budget reductions. The Associations' Tax-Aide program helped to staff these offices so that individual taxpayers could continue to receive assistance in convenient and familiar locations. Many similar actions have been replicated in other parts of our Nation as well.

Tax-Aide activities have also helped to supplement IRS assistance. For example, a Tax-Aide/TCE sign is oftentimes posted in IRS offices. The availability of this assistance enables older Americans to obtain help when the service office is crowded.

Equally important, TCE has reduced the workload and cost of IRS in staffing service sites for the public. This frees up IRS personnel to provide more direct public service.

In addition, the Associations provide volunteer instructors who can augment the IRS training activities. The Associations' volunteer instructors can oftentimes provide more intensive and comprehensive training than the IRS can provide. Volunteer instructors are not subject to the same time constraints applicable to IRS personnel. Our volunteers can train tax counselors over a four to five-day period, rather than the typical three-day block of instruction provided by IRS. This enables the Tax-Aide trained counselors to have more in-depth instruction and a greater understanding of the tax code.

This additional instruction can yield important dividends to IRS. It can help to assure greater accuracy by those who are assisting older taxpayers, making tax counselors more effective and efficient. One example occurred during the current season in Yuma, Arizona. Of the over 750 returns prepared by Tax-Aide/TCE volunteers, taught by Tax-Aide volunteers, only three errors were identified by the IRS review process. This can help IRS to reduce its total taxpayer service costs because appropriately trained volunteers can deliver capable assistance at a much reduced rate than can be provided by IRS representatives.

BENEFIT TO OLDER AMERICANS

Older Americans benefit from TCE, particularly those who need assistance but cannot afford to pay a preparer. Competent volunteer tax counselors can help prepare accurate returns for these individuals. In addition, volunteer tax consultants can help improve taxpayer compliance, which can reduce IRS administrative costs. These are important dividends, particularly during a period when the public is demanding greater efficiency and cost effectiveness in the delivery of services.

Over the years the Internal Revenue Service has repeatedly emphasized that it wants no taxpayer to pay more taxes than are legally due. Every taxpayer should be entitled to all legitimate deductions, credits, and exemptions.

However, the evidence is all too clear and convincing that many older Americans needlessly overpay their income tax each year. Some are overwhelmed by the complexity of the tax form. Others are unaware of important tax savings which can save them precious dollars.

Older Americans have additional complications because they may be exposed to a new set of rules upon reaching age 65. Volunteer tax counselors, though, can assist elderly taxpayers with these provisions to assure that they comply with the Internal Revenue Code, as well as claim every legitimate tax relief measure applicable for them.

From 1974 to 1978, the number of returns prepared by Tax-Aide volunteers increased by 266 percent. This rapid growth provides further compelling evidence that the elderly's need for tax counseling assistance is great.

This service can be provided without "taking business away" from professional preparers. The vast majority of Tax-Aide clients have moderate or limited income. However, they oftentimes have complicated tax situations -- at least from their perspective. Under these circumstances, professional preparers would be required to devote considerable time in preparing a return with comparatively little remuneration for their services.

As a practical matter, many Tax-Aide volunteers are also accountants or tax preparers who voluntarily take time off from their busy schedules to serve the public as part of their "pro bono" work. In fact, many professional preparers actually refer clients -- particularly those with more limited means -- to the Tax-Aide or other TCE programs.

Our Associations also want to emphasize that Tax-Aide, as well as other TCE volunteers, are specifically instructed not to prepare returns beyond their own level of competence. Under these circumstances, the volunteers would either refer the client to the IRS or point out that private practitioners are available. Counselors, though, are not allowed to recommend specific preparers.

OTHER BENEFITS

TCE offers other benefits as well. It provides a high priority service for older Americans at a very limited cost with modest administrative expenses. The principal cost (90% of the funding) is to reimburse the volunteers for their out-of-pocket expenses in serving others in their communities. Only 10% of funding is allowed for the sponsoring organization's administrative costs.

The experience of the Tax-Aide program demonstrates that many volunteers do not submit their expenses. They prefer to consider their out-of-pocket expenses in rendering the service as a charitable contribution. Moreover, numerous reimbursement checks to Tax-Aide counselors are returned because the volunteers regard the service to others in their communities as sufficient payment.

We believe that the reimbursement serves a valuable purpose. First, volunteers are more inclined to make a formal and serious commitment to the program because the reimbursement is tied to a minimum service requirement. Second, the reimbursement and commitment to Tax-Aide means that volunteers are more likely to return to service in subsequent years. This provides greater continuity as well as more experienced preparers.

The program also provides a psychological benefit for the older volunteers. Many older Americans are frustrated when they reach retirement age because they do not know what to do with all their leisure time. Service programs such as VITA and TCE can provide an opportunity for a new and rewarding second career for older persons to serve others in their communities. We have been told time and time again by older volunteers that some of their most fulfilling moments are serving others in their localities. This feeling is evidenced by the fact that nearly 90% of the volunteers indicate their willingness to serve in the next season.

CONCLUSION

IRS's expenditure of time and funds to train VITA and TCE volunteers has proved to be a prudent investment. It has provided quality assistance to older and younger taxpayers on Form 1040, while improving taxpayer compliance and accuracy at the same time. A volunteer program also reduces the workload and cost of IRS in staffing service sites. In addition, volunteers can make services more accessible to the elderly. Moreover, specialized services can be provided to groups traditionally underserved by IRS, such as the homebound, rural, and minorities.

For these reasons, the Associations urge the Subcommittee to approve a modest expansion of the VITA and TCE programs to build upon the excellent foundation that already exists.

Mr. HACKING. Thank you, Mr. Chairman. I am accompanied this morning by Laurie Fiori, who is a member of our legislative staff. We are here representing the National Retired Teachers Association and the American Association of Retired Persons. These affiliated organizations have a combined membership in excess of 12.5 million older persons.

Our purpose here this morning is to comment on the administration's proposed fiscal 1981 funding for the Internal Revenue Service's volunteer income tax assistance and tax counseling for the elderly program. Since 1968, our organizations have sponsored a tax aid program whereby we recruit elderly volunteers who are trained by IRS personnel and then go out into the community to assist older people in the preparation of their income tax returns. These volunteers are reimbursed for expenses, which serves as an inducement to volunteer service.

The administration has proposed reducing the volunteer and tax counseling program from the $2.3 million level in 1980 to $1.8 million. We realize this administration and Congress is committed to balancing the budget. We support that objective because we think it is necessary to help bring down the rate of inflation and bring it under control.

However, we do not think this committee should go along with the administration's proposal, but we think the committee ought to increase from the $2.3 million level to the $2.5 million level. We think that in the effort to balance the Federal budget individuals programs ought to be scrutinized on the basis of benefits they provide relative to the cost, and assessment ought to be made of any potential savings to the Government. Under those criteria, we think moneys appropriated for tax counseling to the elderly are moneys well spent. We think it makes sense to provide tax preparation assistance to the taxpayer, which would have to be provided to pay IRS personnel if they are to achieve taxpayer compliance levels that are aimed at.

As far as the need at which the programs are aimed is concerned, we think that given the complexity of the income tax code and the difficulties older people have, given the form of income they have, in reporting, assessing their income for income tax purpose, the need is growing. In this past tax filing, our organizational tax aid program utilized between 600 and 800 people who assisted in some 400,000 returns. We hope the committee will continue to see the merit of these programs and the growing needs which there are and provide the funds necessary for enabling the programs to grow to meet that need.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Mr. Hacking. We appreciate hearing from you and representing the National Retired Teachers Association. As you are well aware, I know the importance of that organization and your testimony here today. The committee will give every consideration to it.

Mr. HACKING. Thank you very much.

STATEMENTS FOR THE RECORD

[CLERK'S NOTE.—The following statements were not presented at the hearing but were submitted for inclusion in the record:]

STATEMENT OF JAMES R. GORSON, DIRECTOR, FACILITATION, AIR TRANSPORT ASSOCIATION OF AMERICA

My name is James R. Gorson. I am Director of Facilitation of the Air Transport Association of America, which represents virtually all of the scheduled airlines of the United States.

I appear before the Subcommittee on behalf of our 32 member airlines who are engaged in air commerce to, from and within the United States. Their operations are directly affected by Customs policies, procedures and inspection personnel staffing levels.

The airlines believe that appropriations for the U.S. Customs Service must be adequate to meet this nation's extensive and essential foreign commerce needs, specifically those relating to international air commerce, in the most effective and efficient way possible. We are concerned about four areas of the FY 1981 Customs budget request because of its direct impact on airline operations, on travelers, shippers, businesses and communities which rely upon the international air transport system. The four areas I would like to discuss are: 1) excess Customs preclearance costs; 2) Customs staffing at airports; 3) payment for Customs space at airports; and 4) facilitation measures to reduce Customs costs.

Excess Preclearance Costs

Preclearance is a facilitation procedure which permits the inspection by U.S. Customs, U.S. Immigration, and where needed U.S. Agriculture of air passengers and their baggage before departure from another country, rather than on arrival in the United States. Benefits of preclearance accrue to: passengers, who benefit from the greater convenience; Immigration, which stops inadmissable aliens before their departure to the U.S.; Agriculture, which interdicts prohibited products before they enter the United States; and U.S. Customs, which is relieved of inspecting 20 percent of international passengers who would otherwise require inspection at congested U.S. gateway airports.

Despite these benefits, the U.S. Customs Service imposes upon the airlines special administrative charges initiated pursuant to a Customs regulation adopted 10 years ago when that agency was attempting to terminate preclearance.

Customs at that time imposed these "punitive" charges requiring the airlines to pay for Customs housing allowances, duty-post allowances, education allowances, transportation costs incident to assignment to a preclearance station and return, home leave and associated costs, and Customs cost of supervising each preclearance installation.

In 1977 the airlines paid the Department of Treasury $1.7 million for these excess costs, but last year the figure was $2.3 million. The airlines should not be required to bear these charges. Their continued exaction could jeopardize the preclearance program which if discontinued would dump five million additional travelers on U.S. gateway airports each year imposing a particularly difficult burden, for example, on Miami. Nonetheless, the Comptroller General in a report, B-196342, dated 15 April 1980 has ruled that the installation and monthly recurring maintenance costs of the Treasury Enforcement Communication System (TECS) at preclearance locations may be recovered from precleared airlines.

We are puzzled by this decision of the Comptroller General since ATA counsel and all the airlines' legal representatives who have examined the issue have reached the opposite conclusion.

TECS is an internal government security and enforcement communication system of direct benefit only to the Customs Service and to other U.S. enforcement agencies, but which will add $300,000 annually to the private sector's excess preclearance cost burden plus a one-time $1,500,000 installation cost encumberance.

Apart from the question of the legal propriety of such an assessment, we believe that as a matter of public policy monies for administration's programs that benefit the general public should be paid from the general fund of the treasury. We hope this Committee can provide the necessary guidance by instructing Customs not to impose these TECS costs against precleared airlines.

No other agency of the U.S. government involved in preclearance, including the Department of Agriculture or the U.S. Immigration Service, imposes these charges on the airlines. They should be terminated; and the FY 1981 appropriations should reflect the funding which Customs requires for this program.

Customs Staffing at Airports

Foreign air travel to the United States on the scheduled airlines increased 18 percent last year. Increased airline competition and new international air services under the more liberal bilateral air transport agreements called for by U.S. international aviation policy have caused severe bottlenecks in processing international arrivals through Customs formalities at major U.S. airports of entry. Last summer, it was not unusual for incoming air travelers to experience long delays when undergoing Customs inspection at such places as Chicago, Honolulu, Los Angeles, Miami, New York and San Francisco.

In Miami, for example, international air arrivals increased over 20 percent. While 21 additional inspectors have been designated for the new Miami Airport facility which opened the week before last, this will only start to "catch-up" on the inadequacy of inspector staffing there of the last five years. The number of international passengers arriving at the Miami Airport is more than doubling every five years, but there has been no commensurate increase in the number of Customs inspectors to process this traffic. However, as outlined in the attached 6 March 1980 telegram from the Greater Miami Chamber of Commerce, even the 21 Customs inspectors pledged for the Miami Airport may be in jeopardy as a result of the freeze on Government employment announced by the President on 14 March 1980.

We would like to acknowledge the successful efforts of this Committee to facilitate Customs and Immigration formalities of arriving international air travelers at the Miami Airport through recent meetings with those agencies and the airlines with the Greater Miami Chamber of Commerce. These fruitful meetings were initiated by Senator Chiles who chaired the first one. Further efforts are needed now, however, to obtain the 69 additional Customs inspectors needed in fiscal year 1981 for the Miami Airport.

The plight of Customs staffing at Los Angeles and at Chicago's O'Hare Airport is not unlike Miami's. Your attention is invited in this regard to an article in the 3 February 1980 Chicago Sunday Sun-Times headlined *International Terminal Jam is "Dreadful"*, a copy of which is appended to this statement. At Edmonton, Alberta the new facility at the airport will be completed next summer; and with an anticipated 30 percent increase in traffic, a minimum of five additional Customs inspectors will be needed there.

The airlines are also concerned about Customs proposals to restrict landing rights for arriving international aircraft through the use of a lottery or auctioning scheme, rather than adequately staffing international airports. A gambling mechanism should not be used to compensate for staffing inefficiencies, and we have so advised Customs. We will be happy to supply for the record further details of our concern.

The plain fact is Customs budget requests for inspection personnel have been, and still are, unrealistic and fail to take into account annual increases in international air traffic. Attached to our statement is a list of airports showing additional inspectors needed for FY 1981.

We believe with additional staffing, Customs can fulfill its pledge to provide expedient, effective service to the traveling public and importing community. We believe it is the government's responsibility to provide sufficient staffing to conduct required Customs inspections without penalizing the traveling or shipping public or the airlines which provide government-authorized public service.

Payment for Customs Space at Airports

There has been considerable concern over the years on the part of the Customs Service, airport operators and the airlines about the arrangements for providing Customs space at U.S. airports of entry and the several preclearance airports in Canada, Bermuda and the Bahamas.

Customs today must negotiate with airport operators to obtain whatever space can be made available free of charge to the Federal Government for processing arriving international air travelers. As a consequence, the facilities provided Customs are often inadequate, and until just recently Miami Airport was a good example. The Customs Service is authorized under Public Law 87-255 to seek necessary airport facility funding, but to date resources have never been appropriated. The time has come for the United States to operate its Customs Service on a realistic financial basis. Funds must be appropriated for this purpose. These costs would total approximately $8 million in FY 1981, and we urge this Committee to designate this amount for this purpose within the authorized budget.

Facilitation Measures to Reduce Customs Costs

The Customs Service in cooperation with the Immigration Service designed and implemented an experimental inspection procedure at the Philadelphia Airport called "one-stop". Arriving air travelers at Philadelphia now proceed immediately to the Customs counters where a "one-stop" inspection is performed, either by a Customs or Immigration official. That official performs the primary inspection formalities for his agency and the sister agencies, whether Customs, Immigration or Agriculture.

The one-stop procedure is also in operation at the new U.S. preclearance station at the Edmonton, Alberta Airport. The procedure coupled with Customs Accelerated Passenger Inspection System, (CAPIS), does much to speed the flow of international arriving air travelers through U.S. government formalities while making the most economical and efficient utilization of limited manpower resources. The concept should be extended as a cost-reduction and facilitation measure to Los Angeles, Tampa and Houston as soon as possible, and to other airports when needed facilities are available.

Another facilitation measure which we urge this Committee to support is the proposed extension of preclearance to Frankfurt, Germany for an experimental six-month test. Under this test, staffing by Customs would not be needed since U.S. Immigration inspectors at Frankfurt, in addition to performing their own duties, would also perform a primary inspection both for Customs and Agriculture purposes. As a result, approximately 80 percent of these travelers would not need to undergo Customs or Agriculture inspection on arrival in the United States. That is, those travelers with no duty collection or special problems would be free from further Customs inspection here.

Such a test would provide a practical demonstration of the system at a key overseas point and would, at least on an interim basis, considerably ease the congestion being experienced at a number of airports of entry in the United States, including Miami Airport. The map attached to our statement shows the U.S. gateway airports which would be helped in this respect.

Conclusion

In conclusion, Mr. Chairman, Customs inspector staffing considerations need to be consistent with the responsibilities and obligations of the Customs Service under our Customs laws.

They also must be consistent with out national policies to expand international airline service and to increase visitor travel to the United States. If budget constraints impose Customs inspector staff reductions, then the Customs inspection process itself must be reduced on a comparable basis. If the national interest precludes large-scale changes in the process, then adequate staff must be available. Unless one or the other choice is made, serious public inconvenience will result, our airports will become even more congested, and the international air transport system will become less efficient and more expensive.

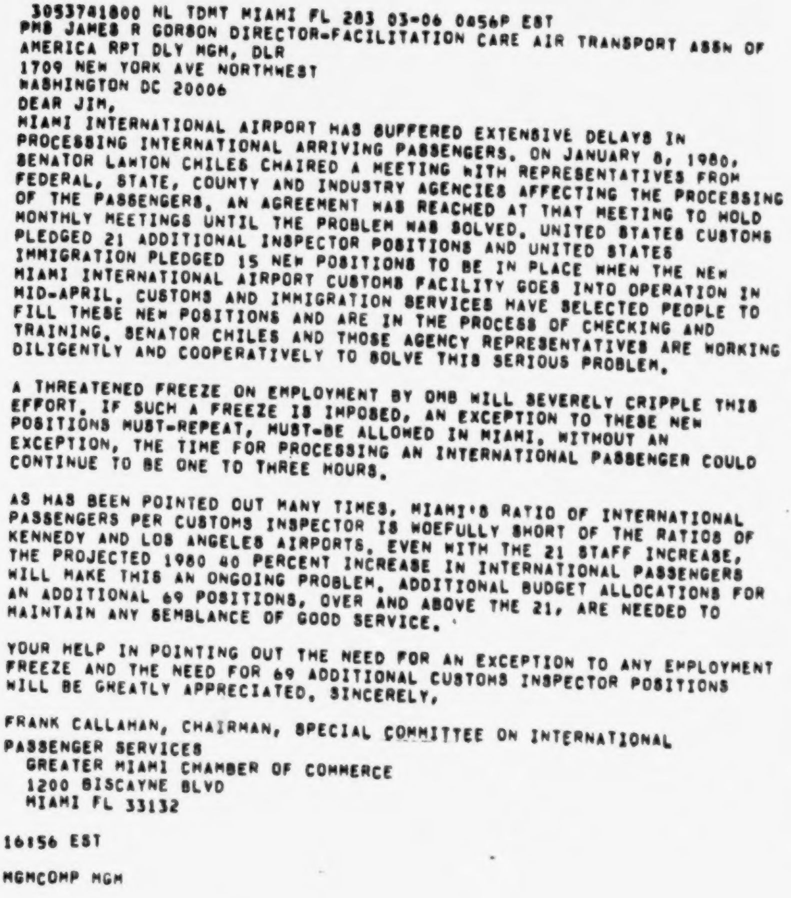
The Office of Management and Budget continuously proposes a stringent budget for the U.S. Customs Service while expecting Customs to perform its obligations and meet increased public demand. Although internal measures are being taken within Customs to offset some of the budget restrictions, the fact must be faced that sufficient funds are not available for Customs to adequately carry out its duties. There is no justification for assessing the airline industry for the costs of providing a government service which exists not for the benefit of the airlines, but for the American public. If the U.S. government believes that Customs provides a vital service to its citizens, then it should bear the responsibility of the associated costs. A clear reflection of Congressional intent with respect to the role of the U.S. Customs Service should be delineated in the appropriations under consideration.

The following appropriations should be included in the Customs Service budget for FY 1981:

- 204 additional inspectors, at a cost of $4.2 million, to cover inspection needs at the U.S. airports shown in the attachment;
- 26 additional inspectors for preclearance airports shown in the attachment; at a cost of $526,000;

- $8 million to underwrite Customs airport rentals and facility costs; and
- $2.3 million for excess preclearance charges.

We will be pleased to work with this Committee and its staff in every way possible on these Customs issues.



3053741800 NL TDMT MIAMI FL 283 03-06 0456P EST
PMS JAMES R GORSON DIRECTOR-FACILITATION CARE AIR TRANSPORT ASSN OF AMERICA RPT DLY MGM, DLR
1709 NEW YORK AVE NORTHWEST
WASHINGTON DC 20006

DEAR JIM,

MIAMI INTERNATIONAL AIRPORT HAS SUFFERED EXTENSIVE DELAYS IN PROCESSING INTERNATIONAL ARRIVING PASSENGERS. ON JANUARY 8, 1980, SENATOR LAWTON CHILES CHAIRED A MEETING WITH REPRESENTATIVES FROM FEDERAL, STATE, COUNTY AND INDUSTRY AGENCIES AFFECTING THE PROCESSING OF THE PASSENGERS. AN AGREEMENT WAS REACHED AT THAT MEETING TO HOLD MONTHLY MEETINGS UNTIL THE PROBLEM WAS SOLVED. UNITED STATES CUSTOMS PLEDGED 21 ADDITIONAL INSPECTOR POSITIONS AND UNITED STATES IMMIGRATION PLEDGED 15 NEW POSITIONS TO BE IN PLACE WHEN THE NEW MIAMI INTERNATIONAL AIRPORT CUSTOMS FACILITY GOES INTO OPERATION IN MID-APRIL. CUSTOMS AND IMMIGRATION SERVICES HAVE SELECTED PEOPLE TO FILL THESE NEW POSITIONS AND ARE IN THE PROCESS OF CHECKING AND TRAINING. SENATOR CHILES AND THOSE AGENCY REPRESENTATIVES ARE WORKING DILIGENTLY AND COOPERATIVELY TO SOLVE THIS SERIOUS PROBLEM.

A THREATENED FREEZE ON EMPLOYMENT BY OMB WILL SEVERELY CRIPPLE THIS EFFORT. IF SUCH A FREEZE IS IMPOSED, AN EXCEPTION TO THESE NEW POSITIONS MUST-REPEAT, MUST-BE ALLOWED IN MIAMI. WITHOUT AN EXCEPTION, THE TIME FOR PROCESSING AN INTERNATIONAL PASSENGER COULD CONTINUE TO BE ONE TO THREE HOURS.

AS HAS BEEN POINTED OUT MANY TIMES, MIAMI'S RATIO OF INTERNATIONAL PASSENGERS PER CUSTOMS INSPECTOR IS WOEFULLY SHORT OF THE RATIOS OF KENNEDY AND LOS ANGELES AIRPORTS. EVEN WITH THE 21 STAFF INCREASE, THE PROJECTED 1980 40 PERCENT INCREASE IN INTERNATIONAL PASSENGERS WILL MAKE THIS AN ONGOING PROBLEM. ADDITIONAL BUDGET ALLOCATIONS FOR AN ADDITIONAL 69 POSITIONS, OVER AND ABOVE THE 21, ARE NEEDED TO MAINTAIN ANY SEMBLANCE OF GOOD SERVICE.

YOUR HELP IN POINTING OUT THE NEED FOR AN EXCEPTION TO ANY EMPLOYMENT FREEZE AND THE NEED FOR 69 ADDITIONAL CUSTOMS INSPECTOR POSITIONS WILL BE GREATLY APPRECIATED. SINCERELY,

FRANK CALLAHAN, CHAIRMAN, SPECIAL COMMITTEE ON INTERNATIONAL PASSENGER SERVICES
GREATER MIAMI CHAMBER OF COMMERCE
1200 BISCAYNE BLVD
MIAMI FL 33132

16:56 EST

MGMCOMP MGM

CHICAGO
Sunday Sun-TIMES
3 FEB 1980

International terminal jam is 'dreadful'

By Harlan Draeger

The overcrowded international terminal is the worst feature of O'Hare Airport, so bad that even civic boosters give it failing marks.

"Pathetic," says E. Stanley Enlund, the savings and loan president who heads the Chicago Association of Commerce and Industry.

"Dreadful," says John Kramer, secretary of the Illinois Department of Transportation.

Enlund came into O'Hare a couple of years ago on a foreign flight, one of five arriving at the same time. He emerged from the terminal 3½ hours later.

Similar delays are experienced every day by arriving travelers waiting to get off planes or walking long distances in the terminal, or struggling to retrieve baggage from two overloaded carousels, or standing endlessly in long lines to move through limited customs stations.

MORE THAN 2.8 million passengers passed through the international terminal in 1978. Foreign traffic is growing twice as fast as domestic passenger volume. But the steady stream of humanity is squeezed into a facility that has been too small and ill-equipped for years.

The sad state of the international terminal finally moved to center stage with the election of Mayor Byrne.

One month after she took office, top business leaders voiced concerns about the international terminal in a visit to her office. The chorus grew louder Aug. 6, when she attended a meeting of the Chicago Economic Development Commission.

Enlund, who was present on both occasions, was surprised at Byrne's readiness to give top priority to the issue. In his view, it's a necessary response to a problem of enormous long-range importance.

"Chicago may lose the opportunity to become a global center if we don't have a first-class international terminal," he said. "The most exciting thing in our economic development over the last 15 or 20 years is Chicago's emerging as a center of international trade."

ON AUG. 13, Byrne rolled out her solution: She would begin negotiations with federal officials to acquire the 391-acre military base on the northeast corner of O'Hare. A new international terminal would be built there, freeing the old one for domestic flights.

President Carter, in Chicago Oct. 15 to speak at Byrne's fund-raising dinner, announced an "agreement in principle" to relocate the Air Force facility elsewhere at the airport. But negotiations ceased after Byrne announced Nov. 27 that she would back Sen. Edward M. Kennedy (D-Mass.) for president.

Efforts by the city to acquire the O'Hare military base date back many years. Late in 1969, the Air Force announced plans to move its 928th tactical airlift group to Dobbins Air Force Base, Ga. All but six planes had moved out when a phone call one week before Christmas froze the transfer.

Every city move to acquire the military base kept bumping into a familiar obstacle—money.

Maj. Gen. Donald J. Smith, retired commander of the Illinois National Guard wing at O'Hare, says the Air Force position has remained consistent. It is willing to relocate to a suitable new site if the city will foot the entire bill—estimated last fall at more than $150 million.

SMITH STILL HAS an Oct. 26, 1965, letter from the late Mayor Richard J. Daley promising to keep the Air National Guard at O'Hare. Daley also pledged that the city would finance any relocation at the airfield.

"With a new mayor, those things die," said Smith, co-chairman of Operation Retain, a coalition working to keep the military facilities at O'Hare. "But that was the basis on which we operated."

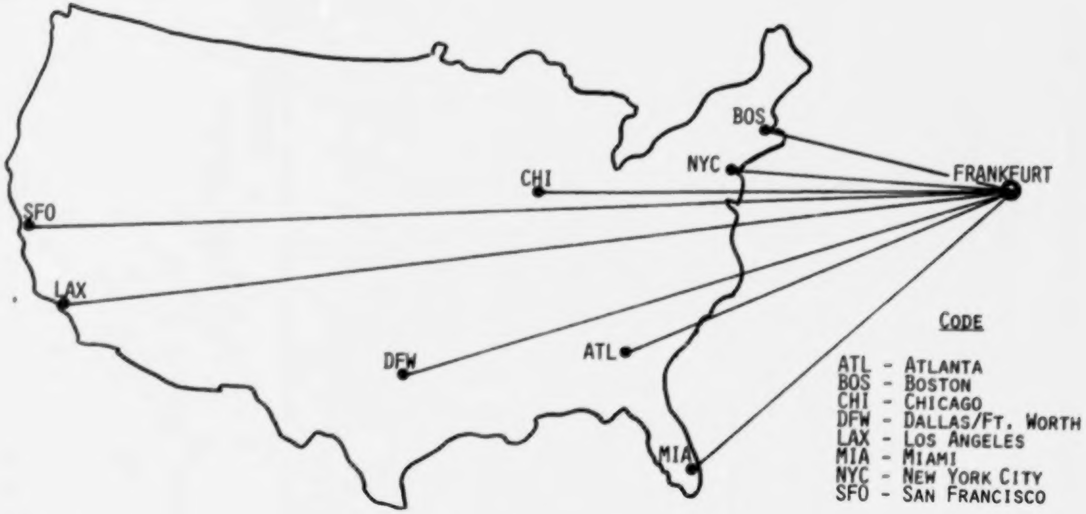
Joseph P. Dunne, the city's aviation commissioner, said the obstacles to a city takeover always have been costs and "somebody to get to the president."

Over the years, more than $21 million has been invested in some 30 buildings at the military base, despite the city's continued interest in acquiring it. The latest, a $2.2 million operations and training headquarters for the Air Force reserve, is scheduled to open March 1. One airline official complains that "no forceful arguments" were made to oppose the expansion.

PRECLEARANCE PROPOSAL

FRANKFURT, GERMANY

NONSTOP AIRLINE ROUTES TO THE UNITED STATES


FRANKFURT
BOS
NYC
CHI
SFO
LAX
DFW
ATL
MIA
CODE
ATL - ATLANTA
BOS - BOSTON
CHI - CHICAGO
DFW - DALLAS/FT. WORTH
LAX - LOS ANGELES
MIA - MIAMI
NYC - NEW YORK CITY
SFO - SAN FRANCISCO

SOURCE: OFFICIAL AIRLINE GUIDE,
WORLDWIDE EDITION, APRIL, 1980.

ADDITIONAL CUSTOMS STAFFING REQUIREMENTS

FISCAL YEAR 1981

U.S. AIRPORTS-OF-ENTRY

Airport	Additional Inspectors
Agana, Guam	1
Anchorage	2
Atlanta	1
Baltimore	2
Boston	7
Chicago	7
Cleveland	1
Dallas	3
Denver	1
Detroit	1
Honolulu	7
Houston	4
Los Angeles	41
Miami	69
Minneapolis	1
New Orleans	3
New York (JFK)	16
Philadelphia	2
Pittsburgh	1
Portland, OR	1
San Antonio	2
San Diego	1
San Francisco	4
San Juan	18
Seattle	3
Tampa	1
Tucson	1
Washington, Dulles	3
Subtotal	204

PRECLEARANCE AIRPORTS

Bermuda	2
Calgary	7
Edmonton	5
Freeport	2
Montreal	2
Nassau	2
St. Thomas, V.I.	2
Toronto	1
Vancouver	1
Winnipeg	2
Subtotal	26

TOTAL: 230

Letter From the American Library Association

March 17, 1980

The Honorable Lawton Chiles, Chairman
Subcommittee on Treasury-Postal Service-
General Government Appropriations
Senate Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

On behalf of the American Library Association, I would like to request that this letter be made part of the hearing record on FY 1981 appropriations for the National Historical Publications and Records Commission under the National Archives and Records Service. A nonprofit educational organization since 1876, the American Library Association's 35,000 librarians, library trustees and other friends of libraries are dedicated to the development and improvement of library service. ALA is pleased to see that in its FY 1981 budget the administration has requested, for the first time, the full $4 million authorized for the National Historical Publications and Records Commission. We wholeheartedly support this request.

The NHPRC publications program supports publication of many of the nation's most valuable historical documents. The public has free access to these publications through libraries which purchase them, either directly by visiting the library or indirectly through interlibrary loan to their home library. The NHPRC-published Directory of Archives and Manuscript Repositories pinpoints the location of many previously little-known historical records. The more recent NHPRC records program has funded projects ranging from the restoration of a small public library's collection of priceless old photographs to model preservation projects which can be duplicated by other states and localities. Although the funds are modest, the records program has had a demonstrable impact on a very large and growing problem.

The 900 delegates to last November's White House Conference on Library and Information Services (two-thirds of whom were citizens not connected with libraries) recommended that funding for NHPRC be increased so that its "essential contribution toward preserving and making accessible the historical records of the Nation can be continued and expanded." We strongly urge your subcommittee to recommend appropriation of the full $4 million requested for NHPRC for FY 1981. As the White House Conference delegates noted, "information on past actions and decisions of government at all levels is essential to understanding the past and planning for the future."

We appreciate this opportunity to present to the subcommittee the views of the American Library Association.

Sincerely,

Eileen D Cooke

Eileen D. Cooke
Director
ALA Washington Office

STATEMENT OF JAMES SCOTT, SUPERVISOR, THE NATIONAL ASSOCIATION OF COUNTIES

CHAIRMAN CHILES, AND DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE, MY NAME IS JIM SCOTT. I AM A MEMBER OF THE FAIRFAX COUNTY BOARD OF SUPERVISORS, AND SERVE AS CHAIRMAN OF THE NACo COMMUNITY DEVELOPMENT STEERING COMMITTEE, ONE OF TWELVE POLICY COMMITTEES OF THE ASSOCIATION. I APPEAR BEFORE YOU THIS MORNING TO PRESENT THE VIEWS OF THE NATIONAL ASSOCIATION OF COUNTIES (NACo),* REGARDING FISCAL YEAR 1981 APPROPRIATIONS FOR THE INTERGOVERNMENTAL PERSONNEL ACT (IPA), A PROGRAM ADMINISTERED BY THE OFFICE OF PERSONNEL MANAGEMENT (OPM). ON BEHALF OF THE NATIONAL ASSOCIATION, LET ME BEGIN BY THANKING YOU FOR THIS OPPORTUNITY TO PRESENT THE COUNTY VIEWPOINT. SPEAKING ON BEHALF OF BOTH THE ASSOCIATION AND FAIRFAX COUNTY, I AM PLEASED TO HAVE THE OPPORTUNITY TO SHARE WITH YOU MY OWN COUNTY'S EXPERIENCE WITH THIS PROGRAM, AND A NUMBER OF COUNTIES THROUGHOUT THE UNITED STATES.

THE NATIONAL ASSOCIATION OF COUNTIES (NACo) BELIEVES THE INTERGOVERNMENTAL PERSONNEL ACT, THOUGH SMALL IN COMPARISON TO OTHER FEDERAL PROGRAMS, IS ONE OF THE MOST IMPORTANT AND EFFECTIVE INTERGOVERNMENTAL ASSISTANCE PROGRAMS. IT IS IMPORTANT BECAUSE IT HELPS COUNTIES, AND OTHER UNITS OF GOVERNMENT, STRENGTHEN THEIR OWN CAPACITIES TO GOVERN. AS SUCH, WE BELIEVE THE IPA PROGRAM IS AN INVESTMENT IN THE FUTURE AND HAS A LONG-TERM CONSEQUENCE, AND BENEFIT, TO THE PEOPLE WE SERVE. THE TRAINING PROGRAMS FUNDED THROUGH IPA PROVIDE IMPORTANT MANAGEMENT TECHNIQUES WHICH COUNTY MANAGERS, AND OTHER LOCAL OFFICIALS, BOTH ELECTED AND APPOINTED, CAN UTILIZE IN MEETING THE CHALLENGES AHEAD. AS FEDERAL ASSISTANCE DECREASES IN OUR JOINT EFFORTS TO BALANCE THE NATIONAL BUDGET, THIS PROGRAM BECOMES ALL THE MORE IMPORTANT. THE IPA IS THE ONLY FEDERAL PROGRAM WHICH IS SPECIFICALLY DESIGNED TO PREPARE STATE AND LOCAL OFFICIALS TO MANAGE EFFECTIVELY, AND IS THE ONLY PROGRAM WHICH PROVIDES THE NECESSARY AND CRUCIAL TOOLS IN LEARNING TO MANAGE WITH LESS. BOTH THE TRAINING AND IMPROVED PERSONNEL SYSTEMS, FUNDED THROUGH IPA, WILL SIGNIFICANTLY INCREASE LOCAL GOVERNMENT PRODUCTIVITY AT A TIME WHEN, NATIONWIDE, OUR PRODUCTIVITY IS AT AN ALL TIME LOW. WHEN LOCAL GOVERNMENTS IMPROVE THEIR OWN PRODUCTIVITY, THEY RESPOND BETTER TO CITIZENS NEEDS, CAN REDUCE THE DOLLARS NEEDED TO PROVIDE ESSENTIAL SERVICES, AND CAN MAKE IMPROVEMENTS IN THE SYSTEM SO THAT LOCAL COMMUNITIES, IN THEMSELVES, ARE MORE PRODUCTIVE.

MR. CHAIRMAN, NACo HAS, AND WILL CONTINUE TO SUPPORT THE IPA PROGRAM AT THE FULL $20 MILLION AUTHORIZATION LEVEL. WE WHOLEHEARTEDLY AGREE WITH THIS COMMITTEE'S REPORT, NUMBER 95-378, WHICH STATED, "THE COMMITTEE BELIEVES THAT THIS PROGRAM IS BENEFICIAL TO STATE AND LOCAL GOVERNMENTS, AND THAT IN THE LONG RUN, SAVINGS TO THESE GOVERNMENTS MORE THAN OFFSET THE COSTS OF THIS PROGRAM." WE FURTHER BELIEVE

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* THE NATIONAL ASSOCIATION OF COUNTIES IS THE ONLY NATIONAL ORGANIZATION REPRESENTING COUNTY GOVERNMENT IN THE UNITED STATES. THROUGH ITS MEMBERSHIP, URBAN, SUBURBAN AND RURAL COUNTIES JOIN TOGETHER TO BUILD EFFECTIVE, RESPONSIVE COUNTY GOVERNMENTS. THE GOALS OF THE ORGANIZATION ARE: TO IMPROVE COUNTY GOVERNMENT; TO SERVE AS THE NATIONAL SPOKESMAN FOR COUNTY GOVERNMENTS; TO ACT AS A LIAISON BETWEEN THE NATION'S COUNTIES AND OTHER LEVELS OF GOVERNMENT; AND TO ACHIEVE PUBLIC UNDERSTANDING OF THE ROLE OF COUNTIES IN THE FEDERAL SYSTEM.

THAT THE COMMITTEE'S STATEMENT WILL BECOME MORE IMPORTANT AS DOMESTIC PROGRAM SPENDING DECREASES.

RECENTLY, NACo WITH THE ASSISTANCE OF THE OFFICE OF PERSONNEL MANAGEMENT AND FUNDS FROM IPA, BEGAN A NEW AND EXCITING LEADERSHIP INSTITUTE. THIS INSTITUTE HAS BROUGHT ELECTED COUNTY OFFICIALS TOGETHER TO DISCUSS COMMON PROBLEMS AND EXAMINE NEW TECHNIQUES FOR MANAGING THESE PROBLEMS. THE FIRST INSTITUTE SESSION HELD LAST MONTH FOCUSED ON QUESTIONS DEALING WITH TIME MANAGEMENT, POWER AND INFLUENCE, MANAGEMENT SYSTEMS AND COMMUNICATIONS WITH THE MEDIA. SESSIONS SUCH AS THESE ARE IMPORTANT TO COUNTY OFFICIALS SINCE THE GROWTH AND RESPONSIBILITIES OF COUNTY GOVERNMENT HAS INCREASED FASTER THAN ANY OTHER POLITICAL ENTITY. COUNTY OFFICIALS SIMPLY MUST BE PREPARED TO HANDLE THIS GROWTH. COPIES OF COUNTY NEWS STORIES EXPLAINING THE INSTITUTE IN MORE DETAIL HAVE BEEN ATTACHED TO THIS TESTIMONY, AND I URGE YOU TO REVIEW THAT MATERIAL.

GENTLEMEN, THE IPA WAS ENACTED TO ENCOURAGE INCREASED EFFICIENCY AND EFFECTIVENESS WITH STATE AND LOCAL GOVERNMENT PERSONNEL SYSTEMS. SPECIFICALLY, THE ACT PROVIDES FOR FEDERAL FISCAL AND TECHNICAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS TO TRAIN EMPLOYEES AND IMPROVE PERSONNEL MANAGEMENT. IN ADDITION, IT FACILITATES THE TEMPORARY ASSIGNMENT OF PERSONNEL AMONG STATE, LOCAL AND FEDERAL GOVERNMENTS TO ENCOURAGE INFORMATION EXCHANGE AND TRAINING.

COUNTY OFFICIALS BELIEVE THE FULL $20 MILLION IS A MODEST NATIONAL INVESTMENT IN HELPING STATE AND LOCAL GOVERNMENTS BUILD THEIR MANAGEMENT CAPACITIES. SOUND PERSONNEL MANAGEMENT AT THE STATE AND LOCAL LEVEL IS IMPORTANT TO THE FEDERAL GOVERNMENT FOR A NUMBER OF REASONS: 1) LOCAL GOVERNMENT BUDGETS ARE HIGHLY LABOR INTENSIVE, AND THEIR EXPENDITURES, WHICH NOW EQUATE TO 13 PERCENT OF THE GROSS NATIONAL PRODUCT, HAVE A MARKED EFFECT ON NATIONAL ECONOMIC POLICIES; 2) $20 MILLION IS A VERY SMALL PERCENTAGE OF THE TOTAL FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS, AND YET THE IPA PROGRAM CAN EFFECT HOW WELL ALL OTHER FEDERAL PROGRAMS MONIES ARE EXPENDED;IT IS IN THE INTEREST OF ALL LEVELS OF GOVERNMENT, AND THE AMERICAN PEOPLE WE SERVE, TO ASSURE THAT THOSE GOVERNMENTS RECEIVING FEDERAL FUNDS BE STAFFED AND MANAGED IN A MANNER THAT WILL ENSURE THE WISE AND EFFICIENT DISBURSAL OF THESE, THE TAXPAYERS' DOLLARS; 3) FEDERAL AGENCIES, THROUGH TRAINING PROGAMS AND PLANNING GRANTS, SUPPORT MANAGEMENT DEVELOPMENT IN STATE AND LOCAL GOVERNMENTS, BUT MOST OF THESE ACTIVITIES ARE LINKED DIRECTLY TO FUNCTIONALLY ORIENTED GRANT-IN-AID PROGRAMS. IPA IS THE ONLY PROGRAM SPECIFICALLY DESIGNED TO ADDRESS SOUND PERSONNEL MANAGEMENT NEEDS AND FORMALLY INVOLVE STATE AND LOCAL OFFICIALS IN DECISIONS ON HOW THOSE FUNDS ARE SPENT.

MR. CHAIRMAN, THE MAINTENANCE OF A MERIT EMPLOYMENT SYSTEM WEIGHS HEAVILY ON A COUNTY GOVERNMENT. EVERYONE AGREES ON THE VALUE OF OPEN COMPETITION, WIDE ADVERTISEMENT OF JOB OPENINGS, VALID EMPLOYMENT TESTS, AND APPLICANTS' RIGHTS OF APPEAL. YET, COUNTY GOVERNMENTS WITH LIMITED STAFFS AND FINANCIAL RESOURCES MUST

CARRY OUT EMPLOYMENT PROGRAMS UNDER THE GROWING CONSTRAINTS OF A SURPLUS LABOR MARKET, FEDERAL REGULATIONS, LITIGATION, AND SOCIETY-WIDE CHANGES IN THE WAY PEOPLE VIEW EMPLOYMENT AND EMPLOYEES. IN 1975, FAIRFAX COUNTY FILLED 1,113 POSITIONS AND PROCESSED 11,776 APPLICATIONS. IN 1979, WE FILLED 2,777 POSITIONS AND PROCESSED 23,993 APPLICATIONS. CORRESPONDENCE IN HANDLING THE FILLING OF THOSE POSITIONS HAS INCREASED FROM 14,961 PIECES IN 1975, TO 39,944 PIECES IN 1979.

THE IPA PROGRAM HAS ASSISTED FAIRFAX COUNTY IN THE PURCHASING OF BOTH HARDWARE AND SOFTWARE AND PROVIDED TECHNICAL ASSISTANCE TO IMPLEMENT AN AUTOMATED SUPPORT SYSTEM TO INCREASE THE EFFICIENCY OF THE COUNTY'S EMPLOYMENT PROCESS. THE EFFICIENCIES REALIZED TO DATE INCLUDE REDUCTIONS IN THE TIME REQUIRED FOR SCORING AND STATISCAL ANALYSIS OF EMPLOYMENT TESTS, AND THE AUTOMATED PRODUCTION OF JOB VACANCY ANNOUNCEMENTS, CORRESPONDENCE AND NARRATIVE REPORTS. AN IMPORTANT BENEFIT OF THIS NEW SYSTEM AS HAS ALLOWED FAIRFAX COUNTY TO EVALUATE TEST SCORE IN A FAR HIGHER DEGREE OF SOPHISTICATION WHEREBY A 100 APPLICANT'S SCORES ARE EVALUATED IN LESS THAN 2 HOURS. IF THIS SAME DEGREE OF EVALUATION WAS CONDUCTED ON A MANUAL BASIS, IT WOULD REQUIRE 90 MANHOURS TO COMPLETE.

ALTHOUGH FAIRFAX COUNTY'S NEW PROGRAM HAS LITERALLY ONLY SCRATCHED THE SURFACE OF THE SYSTEM'S POTENTIAL, THE TIME SAVINGS REALIZED HAVE ALLOWED STAFF TO REDIRECT SOME EFFORTS FROM THE ROUTINE OF APPLICATION PROCESSING TO MORE SUBSTANTIVE AREAS OF THE COUNTY'S PERSONNEL SELECTION PROGRAM.

IN ADDITION TO THE FAIRFAX COUNTY PROGRAM, IPA HAS ASSISTED IN NUMEROUS OTHER PROJECTS ACROSS THE COUNTRY. IPA TRAINING PROGRAMS HAVE IMPROVED LOCAL FINANCIAL MANAGEMENT PRACTICES, ACTED AS INCENTIVES TO THE FORMATION OF LOCAL LABOR STEERING COMMITTEES WHICH HAVE MADE MARKED IMPROVEMENTS IN LOCAL GOVERNMENT PRODUCTIVITY. THE STATE ASSOCIATION OF COUNTIES HAVE DEVELOPED IMPRESSIVE CIRCUIT RIDING PROGRAMS WHERE IMPORTANT MANAGEMENT TECHNIQUES HAVE BEEN SHARED WITH MANY LOCAL GOVERNMENTS IN A COST EFFECTIVE MANNER. THESE TYPES OF PROJECTS WOULD NOT HAVE BEEN POSSIBLE WITHOUT IPA.

CHAIRMAN CHILES, THE OFFICE OF PERSONNEL MANAGEMENT WAS DESIGNATED IN 1979 AS THE LEAD AGENT OF THE FEDERAL GOVERNMENT TO CARRY OUT THE RECOMMENDATIONS OF THE RECENTLY PUBLISHED REPORT TO THE NATIONAL PRODUCTIVITY COUNCIL. AS YOU KNOW, THE NATIONAL PRODUCTIVITY COUNCIL WAS ESTABLISHED IN 1978 AS THE SUCCESSOR TO THE NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE. NACo BELIEVES THAT THE EFFORTS OUTLINED IN THE NCP REPORT, NAMELY, FEDERAL EFFORTS TO BUILD MANAGEMENT CAPABILITY, IMPROVE PERFORMANCE MEASUREMENT METHODS AND TECHNOLOGIES, AND IMPROVE METHODS OF INFORMATION SHARING, REPRESENT IMPORTANT STEPS TO ASSIST STATE AND LOCAL GOVERNMENTS TO INCREASE THEIR PRODUCTIVITY. FOR THIS REASON, NACo SUPPORTS OPM'S REQUEST FOR AN ADDITIONAL $500,000 TO FACILITATE THE DEVELOPMENT OF A COORDINATED FEDERAL EFFORT TO IMPROVE STATE AND LOCAL GOVERNMENTS' PRODUCTIVITY.

THE NATIONAL ASSOCIATION OF COUNTIES HAS BEGUN IMPORTANT WORK IN THIS AREA. ATTACHED TO OUR TESTIMONY IS A COPY OF THE NEW COUNTY TIMES SPECIAL REPORT ON PRODUCTIVITY WHICH PROVIDES EXAMPLES OF COUNTY PRODUCTIVITY PROJECTS. THE DADE COUNTY, FLORIDA PROJECT MENTIONED IN THIS REPORT HAS REALIZED A COST SAVINGS TO THE COUNTY OF $2 MILLION PER YEAR. NACo BELIEVES THAT SUCH PROJECTS SHOULD CONTINUE AS THEY REPRESENT WAYS IN WHICH GOVERNMENTS, ON ALL LEVELS, CAN PROVIDE EFFECTIVE AND EFFICIENT SERVICES WHILE REDUCING THE COSTS OF GOVERNMENT.

THE NATIONAL ASSOCIATION OF COUNTIES BELIEVES THAT THE SUCCESS OF THE IPA PROGRAM IS EVIDENT. WE SUPPORT THE EXPANSION OF THIS PROGRAM TO FUND GENERAL MANAGEMENT CAPACITY BUILDING PROJECTS AND PROJECTS TO IMPROVE STATE AND LOCAL GOVERNMENT PRODUCTIVITY. WE BELIEVE THE PRESENT FISCAL POLICIES OF THE NATION MAKES THE EXPANSION OF THIS PROGRAM ALL THE MORE CRUCIAL AS LOCAL GOVERNMENTS MUST LEARN TO MANAGE WITH LESS FEDERAL SUPPORT.

IN SUMMARY, MR. CHAIRMAN, THE NATIONAL ASSOCIATION OF COUNTIES BELIEVES THAT THE INTERGOVERNMENTAL PERSONNEL ACT IS A MOST SUFFESSFUL AND VITAL PROGRAM FOR STATE AND LOCAL GOVERNMENTS, AND THAT THIS PROGRAM IS THE ONLY PROGRAM WHICH WILL ASSIST STATE AND LOCAL GOVERNMENTS TO EFFECTIVELY DEAL WITH THE NEW CHALLENGES AHEAD. WE URGE YOUR COMMITTEE'S SUPPORT AND RECOMMEND THAT THIS COMMITTEE APPROPRIATE THE FULL $20 MILLION FOR THE IPA PROGRAM, AND $500,000 TO THE OPM TO CARRY OUT IT'S IMPORTANT LEADERSHIP RESPONSIBILITY TO INCREASE THE NATION'S PRODUCTIVITY.

THANK YOU.

STATEMENT OF THE NATIONAL LEAGUE OF CITIES

The National League of Cities supports funding in fiscal 1981 for the Intergovernmental Personnel Act (IPA) at the levels requested by the Office of Personnel Management (OPM). In these times of austerity, $20.5 million is a small sum to pay for increasing the productivity of State and local governments through improvements in their personnel and management practices.

The OPM budget requests include $20 million for continuation of the IPA program and $0.5 million to begin implementation of a State and local productivity program. In fiscal 1980, Congress appropriated $20 million for the IPA program so the 1981 requests represent an increase of only $0.5 million to provide the vital start up funds for the productivity program and an overall decrease in real dollars.

The appropriation of $20.5 million will provide significant returns in the future as governmental productivity increases. Because State and local governments are required to match the IPA grants, they have at least a 50 percent stake in each project and share the risk of a project's failure. The value of IPA grants as seed money for funding permanent improvements in personnel operations is demonstrated by the fact that 75 percent of IPA's projects are continued by the participating governments after the funds from the IPA grants are exhausted.

IPA is the only Federal program aimed at increasing the productivity of State and local governments through improvements in their personnel and management practices. IPA's unique approach to strengthening State and local governments has been very successful, particularly in urban areas where the problems of management are the greatest and the available financial resources are so limited. 80 percent of IPA's funds are allocated to states and 20 percent to OPM for discretionary use. Since at least half of each state's IPA funds must serve the needs of its local governments, the program improves productivity at the community level. The projects selected usually involve more than our jurisdiction and thereby have the added benefit of increasing intergovernmental cooperation.

Despite the demonstrated growing need for cooperative approaches to improving personnel productivity, the basic IPA program continues to be funded at the minimal level of $20 million. OPM has documented that less than half of the IPA funds requested by State and local governments can be awarded and that the number of unfunded projects is steadily increasing. The following partial list of IPA-financed projects supports the continued need for the program:

(1) IPS has provided a variety of benefits in Hartford, Connecticut. Over the last six years, Hartford has been actively involved in administering three IPA programs leading to notable improvements in its personnel system. One program--involving an eleven city consortium--lead to significant personnel efficiencies by providing the capability for new certification testing of fire and police personnel. A second program supported thorough review of all of the personnel codes to remove titles and qualifications that might be sexist in impact. A third program is in the area of affirmative action and involves expanding the capacity to test and interview in various languages (Hispanic, Portuguese, and Italian, for example).

In addition, the Connecticut Conference of Municipalities has undertaken a noteworthy IPA-funded project, called "Computerized Labor Relations Data Service". The State and 35 municipalities now have ready access to data on public employee salaries, wages, and fringe benefits, obviously of tremendous help in personnel policy development. Hartford is making great use of service and the State has found it of considerable assistance in negotiations with its employees.

(2) NLC is currently involved in a project funded by IPA and the Charles F. Kettering Foundation. The project called the "Council Policy Leadership Program," is assisting city councils in seven large cities to develop methods for improving policy development and management in such areas as capital spending and long-range planning. Ultimately, the program will produce a transferable model for improving policy development and management skills for many other cities. The design phase for a national

network of local resource institutions to assist local governments in their functions has been completed.

(3) The State of New Jersey is operating a personnel improvement project for local governments. Teams of experts can be sent wherever they are needed to assist local governments in solving their personnel problems.

(4) New York City is using an IPA grant to establish a senior management service. Because performance evaluation and selection criteria will be developed, the management of all city agencies will improve.

(5) Los Angeles is using IPA funds to strengthen the city's management system by consolidating management level classifications (which presently number 150) into a few broad classes emphasizing managerial, rather than technical skills. A model assessment center will be set up to identify potential problems.

The Federal Government has a critical stake in improving the productivity of State and local governments for two reasons. First, since State and local expenditures account for more than 15 percent of GNP, improvements in productivity in the State and local sector will enhance the Nation's overall economic performance. And second, since State and local governments implement many federal grant programs, State and local inefficiency directly increases the cost and performance of federal performances and activities.

Employment statistics indicate that State and local governments employ more than 12 million people, almost 13 percent of the Nation's work force. The appropriation of $20.5 million to improve productivity will provide significant returns in the future as governmental productivity rises.

In a December 19, 1979 report evaluating IPA, the General Accounting Office described IPA's grants as having "generally been successful," playing "catalytic and supportive role in State and local government personnel management improvement," and having resulted "in several cost savings". One of the problems GAO recognized was that not enough funds are available for the IPA program to alleviate the many problems of State and local government personnel management. The National League of Cities strongly urges the Committee to appropriate $20.5 million in fiscal 1981 for the IPA program.

STATEMENT OF MALCOLM R. LOVELL, JR., PRESIDENT, THE RUBBER MANUFACTURERS ASSOCIATION, INC.

I am Malcolm R. Lovell, Jr., and am President of The Rubber Manufacturers Association, Inc., commonly called the RMA, on whose members' behalf I am filing this statement.

The Rubber Manufacturers Association is the trade association for more than 200 domestic companies which manufacture more than 40,000 finished rubber products, including tires, footwear, hose and belting, and many other industrial and consumer fabricated rubber products. The Association's member companies represent more than an estimated 80 percent of the U.S. market for natural rubber as a raw product for the manufacture of finished rubber products and, therefore, are the major domestic consuming interest in the market for natural rubber.

The International Natural Rubber Agreement (the "Agreement"), adopted at Geneva on October 5, 1979, by a conference convened by the United Nations Conference on Trade and Development (UNCTAD) and signed on behalf of the United States on January 8, 1980, was sent to the Senate by the President for advice and consent to ratification on March 13, 1980. The Administration also has requested an authorization and appropriation of 88 million dollars to fund U.S. participation under the terms of the Agreement.

I testified last week before the Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, U.S. House of Representatives, in opposition to the authorization of 88 million dollars for the U.S. contribution toward the purchase of a buffer stock under the terms of the International Natural Rubber Agreement.

I also testified last week before the Committee on Foreign Relations, U.S. Senate, and requested that no action be taken on the ratification of the Agreement until an appraisal can be made of the implementing steps taken by producing nations to encourage the long term growth in the production and the increased availability of natural rubber.

The RMA Is Opposed Both To The Authorization And The Appropriation Of 88 Million Dollars For The Purchase Of A Buffer Stock At This Time

These requested funds are to be used to develop an international natural rubber stockpile which is to be used as a stabilizing influence on the price of natural rubber.

The Agreement provides for an initial reference price of 45.4¢ per pound with bands of plus or minus 15% and plus or minus 20%. There are also upper and lower indicative prices set at 58.3¢ per pound and 32.4¢ per pound. The upper and lower indicative prices set the limits for adjustment of the reference price and bands. The full resources of the buffer stock are to be utilized to ensure that the price of natural rubber does not fall below the lower indicative price nor rise above the upper indicative price. At the present time the price of natural rubber is approximately 26¢ per pound above the reference price. Indeed if a buffer stock were in existence, the managers would be required to sell rubber, not to buy it.

For the Congress to appropriate 88 million dollars in FY 1981 for this purpose borders on fiscal callousness. Certainly the budget constraints being requested by the President and by an important segment of the Congress would suggest that such funds should be neither authorized nor appropriated at a time when it is abundantly clear that they cannot be used for the purpose proposed.

I would like, if I may, to discuss the rubber industry's attitude toward the proposed international rubber agreement. The RMA has always been opposed to the artificial regulation of the price and the availability of natural rubber. The RMA's Board of Directors has on several occasions expressed the view that the market system is the most efficient mechanism to determine both the price and availability of natural rubber. No one in the industry wants to see an OPEC develop among rubber producing nations. I have communicated this position to the Departments of State, Treasury, Commerce and the Office of the Special Trade Negotiator and I am submitting now for the record copies of my written communications to these executive departments.

At the time the International Natural Rubber Agreement was concluded, it was the understanding of the U.S. industry representatives participating in the negotiations that a number of the producing countries planned to take certain steps to encourage continued growth in the production of natural rubber. It also was their understanding that these steps would take a variety of forms, including a more equitable levying of export taxes between rubber and competing commodities, such as palm oil. In certain producing countries the tax on the export of natural rubber compared to the tax on palm oil has severely discouraged the planting and production of rubber because much of the benefit of higher market prices is not passed on to the producers.

I reiterate that the RMA believes that no action should be taken by the Senate to authorize or to appropriate funds for U.S. participation in the Agreement until an appraisal can be made of the implementing steps taken by producing nations to encourage the long term growth of the production and the increased availability of natural rubber.

The Long Term Demand For Natural Rubber Will Be Determined By Its Availability And Price

I would like to emphasize that the RMA believes that the long term demand for natural rubber will remain strong as long as its price is competitive and its availability to American manufacturers continues uninterrupted.

The long term demand for natural rubber as compared with synthetic rubber will, of course, be importantly influenced by its price in relation to the price for synthetic rubber. The current raw material mix for the rubber industry is approximately 70% synthetic and 30% natural. Research into new synthetic rubber compounds as substitutes for natural rubber compounds is an ongoing process in the industry. A sustained increase in the price of natural rubber or a decrease in its availability often leads to greater efforts to duplicate the properties of natural rubber and to substitute synthetic rubber for natural as the basic raw material for the fabrication of finished products.

If the price of natural rubber in comparison with the costs of synthetic becomes, however, more economical for the rubber manufacturer, a substantially greater percentage of natural rubber would be used. It is for this reason that the RMA believes it is in the interest of both producing and consuming nations that increased production and availability of natural rubber be encouraged not only for this decade but for succeeding decades. It is vital to both the producers and consumers that this production be efficient and economic.

November 29, 1977

The Honorable Cyrus R. Vance
The Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

This is to advise you that the Board of Directors of the Rubber Manufacturers Association on November 16, 1977, took the position that any agreement that is designed to artificially regulate the price or availability of natural rubber is unnecessary and undesirable; but that reasonable stockpiles could (to some extent) limit shortages caused by force majeure. Further, the Board of Directors believes the present market system is the most efficient mechanism available to determine the price and availability of natural rubber.

This action should not be construed as precluding rubber industry participation in meetings on this subject resulting from Resolution 93 (IV) adopted by the United Nations Conference on Trade and Development on May 5, 1976 at Nairobi, as it has in the past.

Sincerely yours,

Malcolm R. Lovell, Jr.

This same letter was sent to:

The Honorable Juanita M. Kreps
The Secretary of Commerce

The Honorable W. Michael Blumenthal
The Secretary of the Treasury

Ambassador Robert S. Strauss
Special Representative for Trade Negotiations

November 29, 1977

Ambassador Robert S. Strauss
Special Representative for Trade Negotiations
1800 G Street, NW, #719
Washington, D. C. 20006

Dear Ambassador Strauss:

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Sincerely yours,

Malcolm R. Lovell, Jr.

November 29, 1977

The Honorable Juanita M. Kreps
The Secretary of Commerce
Washington, D. C. 20230

Dear Madam Secretary:

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Sincerely yours,

Malcolm R. Lovell, Jr.

November 29, 1977

The Honorable W. Michael Blumenthal
The Secretary of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

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Sincerely yours,

Malcolm R. Lovell, Jr.

DEPARTMENT OF STATE

INTERNATIONAL BUFFER STOCK CONTRIBUTION—RUBBER

STATEMENT OF MICHAEL CALINGAERT, DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL RESOURCES AND FOOD POLICY

ACCOMPANIED BY RICHARD OGDEN, CHIEF OF INDUSTRIAL AND STRATEGIC MATERIALS DIVISION

PREPARED STATEMENT

Senator DECONCINI. Next the committee will receive testimony from Mr. Michael Calingaert, the Deputy Assistant Secretary of State for Resources and Food Policy, in support of the $88 million request for the U.S. contribution to the international buffer stock on rubber.

Mr. Calingaert, your full statement will be printed in the record. If you would just highlight that, I do have a couple of questions for you.

[The statement follows:]

STATEMENT OF MICHAEL CALINGAERT

Mr. Chairman, I am pleased to testify before this subcommittee in support of the International Natural Rubber Agreement and the Administration's request for $88 million to meet the financial obligations which would arise from US membership in this commodity agreement.

The instability of commodity prices is not a new phenomenon, nor are its causes unfamiliar. For agricultural commodities, instability comes mainly from the supply side. With minerals and, I might add, natural rubber, it tends to come from the demand side in the form of fluctuations in the business cycle of developed countries. In many cases, price instability is also aggravated by commodity speculation and inventory movements spurred by inflationary expectations and fears of impending shortages.

In recent years, we have seen prices for commodities shoot sharply up and then--except for oil--abruptly collapse, with acute shortages followed by gluts and, in some cases, followed by shortages again. The developments of 1973-1975 are especially noteworthy. There was first a sharp upsurge, with most commodities climbing to twenty-year highs and many setting historical levels. Then the bubble burst, with prices falling just as dramatically as they had risen. In the countries which produced raw materials, having rather fragile developing economies, the effects were quite severe. Foreign exchange earnings, savings, and tax revenues were disrupted. The alternating periods of boom and bust distorted development patterns and aggravated unemployment problems. In the United States and other industrialized countries, the disruptive effects were also formidable. In particular, the price surges for key raw materials spread through the economy, resulting in upward pressures on general price levels. When raw material prices declined again, the prices of the products which used the raw materials tended not to decline or to decline much less. Sugar is probably a classic case of such an effect. Going into 1975, retail prices of granulated sugar had jumped to 60¢ per pound, which was a four-fold increase from the 1973 average. Two years later, at the beginning of 1977, sugar prices had fallen back to 22¢ per pound. During that same period, a six-pack of cola drink rose from 86¢ to $1.34, but only declined to $1.21. And an average one-ounce chocolate bar went from 7.0¢ to 12.7¢, then retreated only marginally to 12.1¢.

With these events in mind, this Administration committed itself to an effort to stabilize international commodity prices. The Administration has actively engaged in a number of international discussions with the aim of reducing price instability and helping assure long-term, reasonably priced supplies of raw materials essential to our economy. At the center of this have been discussions, held for the last three years under the auspices of the United Nations Conference on Trade and Development (UNCTAD), exploring the possibility of international price stabilization agreements for some 18 commodities. From the outset, the Administration has emphasized that price stabilization efforts were not necessary or technically appropriate for all raw materials. In addition, as a matter of principle, the Administration has opposed arrangements which would introduce artifically rigid mechanisms or try to peg prices over time at artificial levels; it has insisted that commodity agreements must enhance rather than replace normal market operations; and it has indicated a strong preference for reliance on buffer stocks as the best means for achieving international price stabilization consistent with the above principles.

Natural rubber is particularly important because it was among the first commodities for which an international consensus has been reached on the desirability and feasibilty of a new commodity agreement and for which actual negotiations were concluded. The Agreement--concluded on October 5, 1979--was preceded first by a year and a half of preliminary discussions and then by a 60-country negotiating conference, consisting of four sessions spread out over the course of a year. The United States played an active and leading role in the entire process of negotiating the International Natural Rubber Agreement. It was thus fitting when the United States signed the treaty on January 8, 1980, that it became the first signatory government.

Natural Rubber - Its Role in the World Economy

Mr. Chairman, before going into a description of the Agreement's provisions, I would like to review briefly the role which natural rubber plays in our economy and some trends that are now under way.

Natural rubber is a plant latex product and produced primarily by three Southeast Asian countries--Malaysia, Indonesia and Thailand--but also reexported in significant quantities by Singapore. Synthetic rubber, on the other hand, is a petrochemical product produced by the polymerization of petroleum-based monomers. The transportation industry, particularly tire production, has traditionally accounted for the bulk of demand for both rubbers. In recent years, however, other sectors such as medical products, belting, footwear, and cable insulation have become increasingly important.

Competition exists between natural and synthetic rubber, and a degree of substitution is possible. While some end products can be made entirely from either natural or synthetic rubber, most products are a mix of the two. The average radial tire, for example, contains 7 pounds of synthetic rubber and 5 pounds of natural rubber. For any given finished product, the choice between the two types of inputs hinges on technical and economic factors. On the technical side, some specific chemical characteristics lend themselves to particular manufacturing technologies and to the performance needs of end-products. On the economic side, the relative prices of these inputs and processing costs prove important. In the United States, the ratio between synthetic and natural consumption is 75/25. On a global basis, the relationship is a little closer to 70/30.

Having said this, I should emphasize that certain applications necessitate natural rubber. For example, radial tires--which have become increasingly popular in the US because of their longer life and higher mileage--require nearly twice as much natural rubber as the conventional bias-ply tires. Similarly, aircraft tires are nearly 100 percent natural rubber, since resistance to heat build-up on impact is of paramount importance.

I also would point out that energy price developments have substantially improved natural rubber's ability to compete with synthetics. Prior to 1973, synthetics enjoyed a distinct price advantage because they were based on inexpensive petrochemical products. Between 1973 and 1975, the four-fold increase in oil prices more than doubled the price of synthetic monomers and related products,thereby changing the fundamentals of that relationship. At the same time, the costs of natural rubber, for which the largest input is labor, were not as strongly or directly influenced by oil price developments. As petroleum prices continue to rise, synthetic rubber production costs will increase more rapidly than those of natural rubber. As a rough rule of thumb, we now estimate that each $1 per barrel increase in the price of crude oil will result in a direct increase of at least 1.2 cents per pound for synthetic production costs--but an increase of only 0.2 cents for natural rubber.

The energy situation--more specifically, rising gasoline prices--has also influenced consumers' tire preferences--and demand for natural rubber. In the United States, there has been a pronounced switch to radial tires, a move which Japan and the European countries experienced some years ago. Radials, as a percentage of our total passenger vehicle tire production, have risen from under 10% in 1972 to over 50% in 1979. The trend is continuing, and the figure is expected to rise to 80% by the end of the 1980's.

The US is the largest single consumer of natural rubber; it depends entirely upon imports for supplies of this commodity. In recent years, natural rubber imports have averaged 770,000 tons annually --which is a little under 25 percent of world trade in this commodity. Our largest suppliers of natural rubber are Indonesia and Malaysia, which account for 52% and 30%, respectively, of our imports. Liberia provides 8%, Thailand 5%, and Singapore 4%. Given our growing demand for radial tires, the natural rubber market in the US appears certain to continue to grow.

At the same time, natural rubber is of major social and economic importance to the developing countries of Southeast Asia, which supply over 90% of world production. It is increasingly important to a number of countries in Africa and Latin America as well. Nearly 2.5 million workers are directly employed in natural rubber cultivation. Over three-quarters of world production is by smallholders, farmers who typically own fewer than ten acres. Moreover, natural rubber is a significant earner of much-needed foreign exchange. In 1978, Malaysia generated 24 percent of its non-oil foreign exchange receipts from the commodity. The figures for Indonesia and Thailand were 17 percent and 10 percent respectively.

In aggregate terms, world trade in natural rubber stands at 3.2 million tons and is valued at well over $2.5 billion. Excluding oil, natural rubber ranks sixth in value among the primary products traded on world markets.

The International Natural Rubber Agreement

Mr. Chairman, having reviewed the role of natural rubber in the world economy, I shall turn to the Agreement itself and quickly review its main elements.

-- The objectives of the Agreement are to stabilize prices of natural rubber without disturbing long-term market trends and to ensure expanded future supplies at reasonable prices. An international buffer stock totalling 550,000 metric tons of natural rubber will serve as the instrument for price stabilization. When acquired, the stocks will be held in both importing and exporting member countries.

-- The financing for acquiring and operating the buffer stock will be shared equally between exporters and importers as separate groups. Each government's individual share will be determined by its votes in the Council, which are a function of its level of net imports or exports in recent years.

-- The U.S. share of total importing member votes will be between 25 and 31 percent initially, depending upon the number of countries which join. Accordingly, our share of the buffer stock contributions by all members would range from 12.5 to 15.5 percent, giving the US the largest share among consuming countries. On the producers' side, Indonesia's share will be roughly equal to that of the United States, while Malaysia's share will be nearly twice ours.

-- The buffer stock will be employed to defend a price range designed to ensure consistency with long-term market trends. The range consists of a reference price, with stabilization bands of plus/minus 15 and 20 percent constructed about it, which will be periodically adjusted upward or downward within preagreed limits in response to market price developments and activities of the buffer stock.

-- Whenever the market price of natural rubber is between the inner 15 percent bands around the reference price, the Buffer Stock Manager may not buy or sell natural rubber, except to rotate stocks. When the market price moves to between the 15 percent band and the 20 percent band, the Buffer Stock Manager may buy (downside) or sell (upside) natural rubber to defend the 20 percent band. If the market price reaches or moves beyond the 20 percent band, he must buy (downside) or sell (upside) natural rubber to defend the 20 percent band.

-- The reference price initially will be set at a level equivalent to 45 cents a pound, while the minimum and maximum levels within which the reference price and its bands operate will be put at 32 and 58 cents respectively. The level of the reference price is approximately equivalent to the average of market prices for 1976-78, the three-year period preceding the negotiations.

-- Several provisions are aimed at expanding natural rubber supplies at reasonable prices to consumers. Exporting members undertake to pursue policies and programs which ensure continuous availability of natural rubber supplies, and the Council may make recommendations to members on steps to avert a potential shortage of natural rubber. In addition, the Council will identify and propose measures that could be taken to expand and improve natural rubber production, productivity, and marketing. The Council shall also consult with members on government natural rubber policies directly affecting supply or demand, and it may submit recommendations to members for their consideration.

-- The Agreement will have a life of five years, but may be extended for an additional two years. Each member's share of the Agreement's assets will be refundable after termination of the Agreement or upon withdrawal.

-- The Agreement will enter into force on or after October 1, 1980--definitively when governments accounting for at least 80 percent of the net exports and imports of those who participated in the negotiations have joined--or provisionally if governments accounting for at least 65 percent of the net imports and exports of rubber who participated in the negotiations have joined.

Foreign Policy Considerations and Economic Benefits

The Agreement is, I believe, an especially well designed and balanced agreement. It should afford us substantial economic and foreign policy benefits. It is also consistent with our overall international commodity policy and efforts.

Natural rubber prices have displayed a considerable degree of instability in the past, with strong rises often followed by sharp and sudden declines. The attached graph shows the frequency and extent of natural rubber price fluctuations over the last 25 years. This volatility has tended to destabilize smallholders' incomes, complicated planning for national development, and had an adverse impact on foreign exchange earnings in the producing countries. At the same time, it has helped foster recurring supply problems and a long-term lag in supply investment.

Thus, a major economic benefit of the Agreement to the United States, as the world's largest consumer of this commodity, is that it will help to assure adequate future supplies. The volatility of natural rubber's prices--coupled with the previous production cost advantage enjoyed by synthetics, the five to seven year period required for rubber trees to reach maturity, and the attractiveness of investment in other agricultural commodities--has discouraged needed long-term investments. As a result, most projections at present are for natural rubber supply problems in the 1980s, with increasingly tight supplies, if not actual shortages, developing. The Agreement's buffer stock could make a major contribution to helping avert such a development by creating an atmosphere that would stimulate new investments and production, thereby bringing additional new supplies into the market to keep pace with rising demand. As I have noted, the Agreement also has several other provisions, besides the buffer stock, which are specifically aimed at expanding natural rubber production. These include an undertaking by producing countries to ensure continuous availability of natural rubber supplies, a provision for Council recommendations on steps to avert shortages, and a provision whereby the Council will identify and propose measures to expand and improve production.

A second major economic benefit to the United States is that by moderating price increases during the periods of high demand, the buffer stock could help reduce inflationary pressure in manufactured rubber product prices. This would be most notable perhaps in the area of passenger tires--sales of which totalled nearly 150 million units in 1979, nearly 70% being ones that consumers purchased as replacements for those on vehicles they already owned. In this regard, it is estimated that a 1 cent per pound increase in the price of natural rubber produces a 5 cent increase in the cost of making a passenger tire.

A third economic benefit relates to conservation of energy, a topic which is receiving greatly increased attention. Here, two examples can illustrate the importance of natural rubber. One is that radial tires, which utilize natural rubber, contribute to reduced gasoline consumption through improved mileage. Based on data by the Automotive Information Council, radial tires provide about a six percent mileage improvement over non-radials. As such, their present use on passenger cars currently saves about 1.6 billion gallons of gasoline per year in the United States. The other is that it is estimated, on the basis of energy content, that the current level of world natural rubber production -- some 3.5 million metric tons annually -- corresponds to roughly 200,000 barrels of oil per day. As such, natural rubber production facilitates moderate savings in crude oil production. The amount is hardly formidable when compared to output by the major OPEC countries, but it is still considerable.

The foreign policy benefits of the Agreement are also extremely significant. The Agreement will strengthen our relations with the Association of Southeast Asian Nations (ASEAN). Four of its members--Malaysia, Indonesia, Thailand, and Singapore--account for 88 percent of the world's exports of natural rubber. At present, ASEAN represents an important collective unit by which the US can supplement our bilateral strategic and political interests in the region. In the aftermath of our departure from Vietnam and in view of current instabilities in the area, strengthening and improving our ties with ASEAN has assumed great importance.

The Agreement could also improve our relationships with several African countries, which are smaller but nonetheless significant producers of natural rubber. As I have already noted, natural rubber is of particular social and economic importance to all the producing countries. From their standpoint, the Agreement could offer greater predictability of smallholder incomes and foreign exchange earnings, help encourage investments that would steadily increase production, and stimulate rural development.

The producing countries have shown that they have a serious interest in natural rubber and are eager to see the Agreement come into force. The members of the Association of Natural Rubber Producing Countries (ANRPC), an intergovernmental consultative body for the producers, have indicated their interest in and intention to pursue "dynamic production policies" designed to expand world natural rubber supplies. They also have announced that an ANRPC producers-only price stabilization scheme, concluded in 1976 but never implemented, will be formally set aside when the International Natural Rubber Agreement becomes operational. Moreover, Malaysia has also formally ratified the Agreement, the first country to do so. That move is especially noteworthy since Malaysia will shoulder a quarter of the total financial burden of the Agreement--nearly double the US share. In addition, Malaysia also realizes the importance of incentives in encouraging production of this commodity. In November of last year, only a few weeks after conclusion of negotiations on the Agreement, Malaysia implemented significant changes in the structure and level of its commodity export taxes. At current prices, these alterations have reduced taxes on natural rubber by over 19% and increased slightly the duty on palm oil, a crop which competes with natural rubber for land use. We are quite pleased with this change and think it represents a noteworthy first step in further government efforts to stimulate production and supplies of natural rubber.

The Agreement--A Milestone in Commodity Discussions

The Agreement is also particularly significant because it embodies and advances several concepts which the United States has strongly advocated in international commodity discussions in recent years. In particular, I would draw your attention to five aspects.

-- The Agreement strikes a fair and careful balance between responsibilities and benefits for both producing and consuming countries. The financial burden of the Agreement is shared equally between the two groups. The Agreement seeks to assure adequate supplies to meet future demand, as well as to stabilize prices.

-- No provision is made for the use of export or production controls as a price stabilization measure. We view this as a major achievement. In some other commodity agreements, such measures have tended to interfere with supply growth by discouraging necessary investments, to penalize more efficient producers, and to reduce the amount of stock later available to defend upper limits of price ranges.

-- The buffer stock of 550,000 tons is sufficiently large to be able over time to defend both the upper and lower levels of the price range. In the past, too-small buffer stocks have made commodity agreements initially attractive on financial grounds. Later, though, they have failed to defend upper price levels and only succeeded in potecting lower levels by relying on export or production controls.

-- The Agreement's price range is designed to move with underlying market forces. Provision is made for possible downward--as well as upward--revision of the reference price and stabilization bands. Moreover, revisions are to be made on the basis of specific criteria (mainly market price trends and activity by the buffer stock.

— Members' votes are directly related to their financial obligations, which are based on their trade shares. In practice, each member must pay for every vote assigned to it.

Finally, this commodity agreement also promotes our general economic interest in efficient and freely competitive world trade. As a matter of principle, we seek to advance international relationships conducive to our own preference for open markets which operate with a minimum of restriction on the flow of goods, services, capital, and technology. We consider this Agreement to be consistent with and supportive of that principle.

Financial Implications of U.S. Membership

To meet US obligations arising from membership in the Agreement, the Administration has included a request for $88 million in the FY 1981 budget. The Administration believes it extremely important that we obtain early approval for S for the full amount of the request.

The Agreement specifically provides that members commit themselves to finance the total costs of acquiring and operating the 550,000 ton international buffer stock. The commitment, it should be noted, is to that particular stock level, rather than to a specific dollar amount. This is a provision which the US delegation introduced and firmly advocated. The intent was--and is--to ensure that the effective size and capabilities of the buffer stock could not be eroded by less precise commitments or by operational factors, such as the possible need to hold substantial amounts of stock for long periods of time. We have done this because we believe it is essential for the Agreement to be able to achieve its objectives.

The $88 million figure represents our best estimate of the funds which might be necessary under reasonably severe circumstances to meet US financial obligations as a member. It reflects our analysis of past market trends and operational considerations, such as the number of countries likely to join the Agreement, actual acquisition costs, and warehouse expenses. The Administration considers this amount adequate to meet our treaty commitment under the Agreement. While a supplemental authorization and appropriation might be required in the event of extremely adverse economic conditions during the life of the Agreement, I believe that to be quite unlikely.

The Administration believes it extremely important that we obtain early approval for the full amount of the request. This is so because of two obligations that would arise from our membership in the Agreement.

--Contributions by members, determined according to their votes in the Council, are mandatory. This is a provision which the negotiating governments believed essential to guarantee the Agreement's credibility and effectiveness.

--After the initial contribution, additional call-ups for buffer stock transactions will be made by the Council--as and when necessary--and will be due from all members on 30 days' notice. Equity among members and financial viability dictated these provisions.

Although natural rubber prices are quite high today, past experience has shown they can be unexpectedly volatile. For example, in 1974 alone, prices dropped more than 60 percent between January and November as a result of depressed demand in the industrialized countries. It is clear, then, that a rapid downturn in the market might make it necessary for the US to meet its commitment to contribute to the buffer stock on very short notice. If the US were not able to meet that legal obligation, this could undermine the effectiveness--if not the existence--of the Agreement.

The wisest and most efficient approach thus appears to be an FY-1981 authorization and appropriation, covering the life of the Agreement and for the entire amount which we believe might prove necessary during the life of the Agreement.

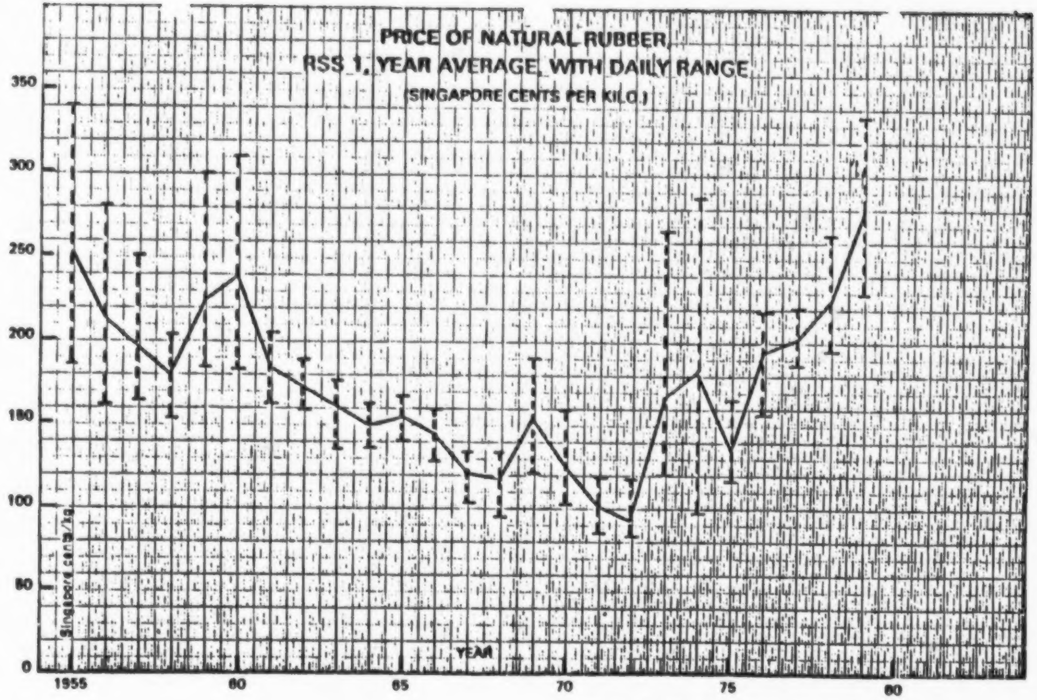
The Agreement provides for an initial contribution by all members in cash equivalent to $33 million. That amount, apportioned among members according to their votes in the Council, will serve as "seed money" so that the buffer stock account can be quickly established and be prepared, if necessary, to commence its operations. The US share of that amount will be approximately $5 million. It will be due within 18 months of the Agreement's entry into force and is thus likely to be an FY 1981 outlay. I would like to note that a modest actual outlay of that amount is fully consistent with the concerns, expressed by Congress and the President, regarding current levels of federal spending and the need for fiscal discipline during these difficult times.

The process of Congressional consideration of the Agreement and the Administration's request for $88 million is already underway. The Senate Foreign Relations Committee conducted hearings on advice and consent consideration, as well as the Senate authorization bill,on last Wednesday, April 23. On the House side, the Appropriations Committee held hearings on March 4. The International Economic Policy Subcommittee of the Foreign Affairs Committee held hearings on H.R. 7037, the counterpart to the Senate authorization,on April 16 and 22. Then, on April 24, the Subcommittee reported out that bill to the full Committee. In summary, we are presenting our authorization and appropriation requests to the appropriate committees in an effort to meet the May 15 Congressional budget deadline for inclusion of items in the FY 1981 budget.

Conclusion

Mr. Chairman, the International Natural Rubber Agreement is well designed and properly balanced. I believe both our economic interests as consumers and our foreign policy interests are well served by the new Agreement. I strongly urge prompt and favorable approval by the Subcommittee, the full Committee, and the Senate of the Administration's request for $88 million to make possible our participation in the Agreement.

Thank you.



NOTE: US $1.00 = 221 Singapore cents on April 25, 1980.

BUDGET REQUEST

Mr. CALINGAERT. Thank you very much, Mr. Chairman.

I am accompanied by Richard Ogden, who is Chief of the Industrial and Strategic Materials Division of the State Department, and who was also the chief U.S. negotiator on the agreement.

I am pleased to testify before this committee in support of the International Natural Rubber Agreement and the administration's request for $88 million to meet the financial obligations which would arise from U.S. membership in this commodity agreement.

BACKGROUND

By way of background, I think it is well-known that the instability of commodity prices—and we have seen the effects of that over the past decade, particularly in the middle seventies—has had serious effect on the producing countries and consuming countries as well. For that reason the United States has looked at a number of commodities to see if it would be technically and economically feasible and in the U.S. interests to undertake negotiations and participate in certain commodity agreements.

This is how we get to the negotiation of a new commodity agreement, in this case natural rubber. I think my statement covers the issue of the importance of natural rubber to the United States and the world economy.

PROVISIONS OF THE AGREEMENT

I will then turn directly to a brief overview of the provisions of the agreement.

The objectives of the agreement are to stabilize prices of natural rubber without disturbing long-term market trends and to insure expanded future supplies at reasonable prices. The instrument for price stabilization is the creation of an international buffer stock of 550,000 metric tons. The financing for acquiring and operating this is shared equally between exporting countries and importing countries—as separate groups. The stock would then be employed to defend a price range designed to insure consistency with long-term market trends. The range consists of a reference price, with stabilization bands of 15 and 20 percent on either side of it. The stock would then be used in order to defend that general price range. The reference price that has been initially agreed to is 45.4 cents, which is approximately the average price for rubber for the 3-year period immediately preceding negotiation of the agreement.

Senator DECONCINI. Excuse me, is that a trigger price?

Mr. CALINGAERT. That is the reference price. It is a central point around which the bands are constructed.

There are several provisions in the agreement aimed at expanding natural rubber supplies at reasonable prices to consumers, and this is an item to which we assigned high priority in the agreement. The length of the agreement is 5 years. It may be extended for an additional 2 years. Each member's share of assets in the agreement are refundable upon termination of the agreement or upon that country's withdrawal. The agreement is scheduled to enter into force on October 1 if the requisite number of countries have signed by then.

The agreement was one that was negotiated from scratch. There had not been a previous agreement on natural rubber, and it contains a number of specific provisions which we think are very important for international commodity agreements. There is a very careful balance between the interests, responsibilities and benefits of the exporting and importing countries. The votes of the members are based on trade shares. Financial contributions are based on votes. There is no provision in the agreement for use of export or production controls. The focus is on supply expansion, not restriction.

The buffer stock, we believe, is sufficiently large in order to be able to defend both the upper and lower ends of the price range.

BENEFITS TO THE UNITED STATES

This agreement, we believe, has a number of important benefits to the United States, both in economic terms and in foreign policy. On the economic side, we feel it is very important that the agreement would help to assure adequate supplies of natural rubber in the coming years. Most predictions are that there is a danger of inadequate supplies by the end of this decade, and this would be very serious to our economy. Indeed, we expect in the coming years there will be an increase in demand for natural rubber in the United States.

Senator DECONCINI. Mr. Calingaert, what is the price of rubber today?

Mr. CALINGAERT. It is around 70 cents.

Senator DECONCINI. In February I am advised it was 83 cents. So it has come down.

Mr. CALINGAERT. It is coming down.

Senator DECONCINI. Does this agreement provide for the selling of rubber at a certain price?

Mr. CALINGAERT. The operation of the buffer stock initially would come into play only if and when prices come down to and then below the price range. At the moment, the going price of natural rubber is above that range.

Senator DECONCINI. If it is above, then you don't sell, only when it is within the range.

Mr. CALINGAERT. Acquisition of natural rubber would occur when market prices fall into the "may buy" range. Sales of natural rubber would then occur when market prices rose into the "may sell" area of the price range or above. At present, there is no buffer stock, so there is no natural rubber. The agreement doesn't come into force until October 1.

Senator DECONCINI. If we had a buffer stock from purchases made below the range, then we would be selling rubber.

Mr. CALINGAERT. Yes, the stock would be selling.

Senator DECONCINI. Why is that in the best interests of the United States? If there is a shortage of natural rubber and price is very high, why should we be selling it other than to depress the world price? Isn't it more important we keep a stockpile?

Mr. CALINGAERT. We are referring to an international buffer stock to stabilize prices. We are not referring to any U.S. strategic stockpiles of natural rubber.

Senator DECONCINI. I see. Does the U.S. stockpile any rubber?

Mr. CALINGAERT. There is a separate U.S. strategic stockpile, containing natural rubber as well as other strategic materials.

Senator DECONCINI. We don't have to sell that at any price, or do we?

Mr. CALINGAERT. Buying and selling of that commodity has absolutely nothing to do with this agreement.

Senator DECONCINI. Thank you for the clarification.

Mr. CALINGAERT. The second major benefit, we believe, is the provision which will, as I mentioned before, enhance supplies of natural rubber. There are specific provisions in their undertakings by the producing countries to maintain supplies and actions which the council of this organization could take along those lines.

The third economic benefit relates to conservation of energy, an issue of great importance and interest today. To the extent that natural rubber use can be increased, it provides for some savings in terms of oil production used otherwise for synthetics.

ENTRY INTO FORCE OF THE AGREEMENT

Senator DECONCINI. Excuse me, this treaty is not in effect now mainly because we have not ratified it, but even if it had been ratified, the price has never been in the range, has it?

Mr. CALINGAERT. There are two separate issues, Mr. Chairman. One is accession to the treaty. Negotiation was completed at the end of last year. It is now open for signature until June 30, 1980. A number of other countries have signed. Assuming the requisite number of countries ratify, it comes into operation in October.

Senator DECONCINI. So nothing will happen until October.

Mr. CALINGAERT. Right. Even at that time if the prices remain above the price range, there would be no activity of the buffer stock and other provisions.

THE APPROPRIATION REQUEST

Senator DECONCINI. What are the $88 million for?

Mr. CALINGAERT. The $88 million are for our share of the contribution to the stock.

Senator DECONCINI. Is that set out in the treaty?

Mr. CALINGAERT. The treaty provides that there will be an initial contribution by the joint membership of $33 million. Of that, the U.S. share would be approximately $5 million. That is provided for in the treaty, and it is money for the buffer stock manager of the organization to be in position to use at such time as it is needed. Beyond that, the members are required, when called upon for the buffer stock's operation to make additional contributions. The provisions are that within 30 days of a call, countries are obligated to make their contributions. The reason we are asking for the entire appropriation is so that we will be in the position, to distribute those funds, at such time as they are required. The immediate outlay, Mr. Chairman, would be only $5 million.

Senator DECONCINI. So really, assuming the Senate ratifies the treaty, by October 1 you really have to have $5 million to be in compliance with the treaty.

Mr. CALINGAERT. Immediately, yes. But as I explained in my testimony, the administration believes it is important to obtain approval for the full $88 million because of our obligations to contribute to the buffer stock if purchases are required.

OUTLOOK FOR THE NATURAL RUBBER MARKET

Senator DECONCINI. Do you have projections that the price of rubber is going to go up or down, or do they project this in the international rubber market?

Mr. CALINGAERT. Well, making projections can be very hazardous. I think the best one can do is look at past history. The price has gone up and down.

Senator DECONCINI. I mean over what period of time. What do the economists and market experts think about the market, is it going to go up in the next 12 or 6 months, or does anybody speculate? Do economists give any observations?

Mr. CALINGAERT. There are, of course, a variety of views. I think the general feeling is it is more likely to go down rather than up because of the impending recession and what that would do to demand.

Senator DECONCINI. Did you say there is a rising shortage of rubber?

Mr. CALINGAERT. I was speaking of the longer period through the end of the decade. Most projections are that during the decade there will be a shortage.

Senator DECONCINI. Go ahead.

CONCLUSION

Mr. CALINGAERT. In terms of foreign policy considerations, this is clearly an agreement of great interest to natural rubber-producing countries. The most important ones are in Southeast Asia and are members of the Association of Southeast Asian Nations—Malaysia, Thailand, Singapore, and Indonesia. They have a serious stake in natural rubber and have taken a great interest in concluding the agreement. These are countries which have been helpful to us and with which we maintain good relations.

The final point I wish to make is a comment on our request for the entire appropriation of $88 million. Contributions are mandatory under the terms of the agreement and the callups would be on the basis of 30 days' notice.

I would just point out, in conclusion, we have been carrying out the process of congressional consideration of the agreement in various committees on both sides of Congress and making an effort to meet the May 15 congressional budget deadline.

Thank you.

Senator DECONCINI. Thank you. I have no further questions.

Do you have further comments?

Mr. OGDEN. No, sir.

Senator DECONCINI. Thank you very much.

FEDERAL ELECTION COMMISSION

STATEMENT OF ROBERT O. TIERNAN, CHAIRMAN, FEDERAL ELECTION COMMISSION

ACCOMPANIED BY:

FRANK REICHE, COMMISSIONER
ORLANDO POTTER, STAFF DIRECTOR
CHARLES N. STEELE, GENERAL COUNSEL

PREPARED STATEMENT

Senator DECONCINI. The committee will now receive testimony from the Federal Election Commission regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. $11,530,000 and 309 permanent positions have been requested for fiscal 1981, and $550,000 have been requested for the fiscal year 1980 supplemental.

The committee is pleased to have Mr. Robert Tiernan with us today to present the testimony.

Mr. Tiernan, your full statement will appear in the record. We would appreciate it if you could give us the highlights, and please introduce your colleagues.

[The statement follows:]

STATEMENT OF ROBERT O. TIERNAN

On behalf of the Federal Election Commission (FEC), I would like to express our appreciation for the opportunity to appear before the Committee regarding the Federal Election Commission's appropriations request for Fiscal Year 1981. Appearing with me today are Commissioner Frank Reiche, Staff Director Orlando Potter and General Counsel Charles N. Steele.

Introduction

Fiscal Year 1981 is particularly important for the FEC. Fiscal Year 1981, from October 1, 1980 through September 30, 1981, includes the November 1980 presidential and congressional elections. The 1980 elections will include the first presidential election for which the FEC will have had an opportunity to fully prepare.

As is well known, the FEC was established in mid-1975, and had limited time to hire and train staff in preparation of the upcoming elections. Then, early in 1976, the FEC had some of its power and authority suspended for a period of time in the aftermath of the Supreme Court's decision in Buckley v. Valeo. Reconstituted by the May 1976 amendments, the FEC was required to implement an entirely new statute in the middle of an ongoing election process.

Although the FEC was given limited funds to fully carry out all the statutorily mandated duties and responsibilities, we feel that the FEC performed remarkably well during that difficult early period.

With the benefit of the experience gained by the FEC in administrating the Federal Election Campaign Act of 1971, as amended, (FECA) in the 1976 and 1978 elections, the public, the Congress, and the media, have a right to expect a smooth, first rate effort by the FEC in the regulation and administration of the 1980 elections. To accomplish this goal, however, sufficient funds will be needed to implement the provisions of the FECA.

The FEC's budget request for Fiscal Year 1981 represents the resources necessary to meet our goals for thorough implementation of the FECA: (1) promotion of voluntary compliance with the FECA; (2) enhancement of full public disclosure of campaign finance activity; (3) certification and disbursement of matching funds in the presidential primaries; (4) certification and disbursement of federal funds for the major party nominating conventions; (5) certification and disbursement of federal funds for the presidential general election; (6) provision of easy access to the public for all information on campaign finance activity; and (7) verification and enforcement of the provisions of the FECA through audits and enforcement actions, including conciliation and litigation, if necessary.

Based on the experience in the 1976 and 1978 elections, the FEC will require a budget of $11,530,160 and a staff of 309 permanent personnel to fully enforce the FECA in a fair, efficient, vigorous, and independent manner.

Impact of P.L. 96-187

The FEC submitted its original Fiscal Year 1981 budget request based upon the law in effect as of July of 1979. The FECA, as amended in 1976, was further amended in 1980. These amendments, contained in P.L. 96-187 were subsequent to the FEC's submission of its budget request to the Office of Management and Budget and to the Congress.

Therefore, the Decision Packages contained in this submission were based upon the extant law in 1979. We will address the impact of the recent amendments in our testimony. In general, while the major thrust of the 1980 amendments was to reduce the reporting and filing requirements, the work of the FEC is not significantly altered in many respects.

Further, with its limited resources, there are a number of provisions in the FECA which the FEC has been unable to implement fully.

For example, during Fiscal Year 1979, the FEC had already reduced the resources allocated to its non-filing enforcement program. Due to limited resources in Fiscal Year 1980, the FEC's Management Plan further reduced resources allocated to this program. This was carried forward into the Fiscal Year 1981 budget request, which is in keeping with the 1980 amendments. It is true that the amendments do have the potential to reduce the number of candidates and committees filing under the FECA. However, this is offset somewhat by the requirement for separate segregated funds to register and report after activity of only one dollar. This category of filers has shown the most dramatic increase in new registrations over the past two years.

Generally, the recent amendments reduce the number of reports filed under the FECA, particularly in an off-election year. However, for those reports filed, the amount of campaign finance activity remains the same over the two-year election cylce.

The change in reporting thresholds from $100 to $200 for receipts and disbursements will reduce the size of reports somewhat. Consequently, the volume of data entry also will be reduced. This will allow the Commission to review more reports by limiting data entry requirements. Thus, the Commission will be able to shift resources from data entry to reports analysis. During Fiscal Year 1979 and Fiscal Year 1980, the FEC was forced to shift resources in the opposite direction. Thresholds for review and analysis of disclosure reports had to be imposed in order to release resources needed for data entry functions.

The 1980 amendments will impose more responsibilities on the FEC for compliance and other legal actions. Now, the FEC will have to track and review additional written statements in compliance actions. Specific statutory notification requirements and provisions for the exchange of legal briefs are now contained in 2 U.S.C. Section 437g.

In addition, the imposition of specific statutory deadlines on the issuance of advisory opinions will necessarily place a new burden on the legal policy staff. The FEC should be able to comply with the 60-day requirement. Nearly 75% of all advisory opinion requests were answered within 60 days in 1979. However, the 20-day response requirement 60 days prior to any election will create a new burden. During peak election periods, the legal staff will most likely be required to shift activity from other programs to assist in the issuance of advisory opinions.

It should also be noted that requests for such opinions will probably increase due to the changes in the FECA and because of the relaxation of standards for standing for these opinions. The FEC is considering alternatives such as expedited advisory opinion procedures, but is limited in this respect by the Government in the Sunshine requirements.

The Information and Press operations will be focused on updating and revising publications and on outreach efforts to interpret and explain the new statute and new implementing regulations. While the FEC began rapidly updating several publications for use in the 1980 elections, the bulk of Fiscal Year 1981 will be spent further refining and revising publications.

An aggressive outreach effort will help filers and regulated entities comply with the law in the 1982 elections. The information objectives of the FEC require continued outreach activity. Such objectives are only heightened by changes in the statute.

The Audit Division will be focusing its efforts on the completion of the audits of the 1980 presidential candidates who were recipients of federal primary matching funds and general election funds. In addition, discretionary audits of other candidate and political committees will continue in Fiscal Year 1981. The Audit and Reports Analysis Divisions will develop compliance thresholds to generate these discretionary audits consistent with the requirements of the recent amendments. While there will be new methods for determining the categories and numbers of committees to be audited, the new compliance thresholds, procedures, and revised audit policy will still require the requested resources.

In sum, the impact of the 1980 amendments will be felt in Fiscal Year 1981 by all Offices and Divisions in the FEC. There will be a reduction in resource requirements in some programs. However, there will be substantial increases in others. The level of funding requested will not be altered appreciably; rather the focus of efforts and priorities will shift.

Fiscal Year 1981 Request and the 1980 Elections

A full appropriation in Fiscal Year 1981 is necessary for the successful regulation of campaign financing for the 1980 elections. The election itself, of course, takes place in Fiscal Year 1981. In addition, the three largest, and usually most significant, disclosure reports are filed in Fiscal Year 1981: the October 15 report, the 12-day pre-general election report, and the post-general election report. In general, these reports are the largest in terms of activity. They require greater review, coding, and data entry efforts. Furthermore, these reports disclose the activity closest to the general election.

The Public Records Office is the busiest in the time just preceding the general election itself. The number of public visitors and volume of information requests increases dramatically during this period. The FEC responds to this increase through the addition of temporary help and expanded Public Records Office hours.

In addition, during the time just prior to the general election, there is a large volume of complaints filed with the FEC. This requires a significant commitment of resources to speedily review all complaints in order for the FEC to meet the 120-day statutory requirement to address matters brought to its attention. Therefore, the legal staff must have the manpower to resolve these externally filed complaints in a timely fashion, and still be able to maintain staffing levels for defensive and offensive litigation.

The advisory opinion and policy staff also must be able to maintain a quick turnaround time for advisory opinion requests, particularly in the pre-general election period. These requests usually increase as the general election approaches. This burden is increased by the provisions of P.L. 96-187 setting a 20-day time limit for response to requests received within 60 days of an election. This is one area where staffing requirements may well be higher than stated in the original Fiscal Year 1981 budget request.

The FEC's Public Information and Press programs will operate at peak levels at the beginning of Fiscal Year 1981. The Public Information specialists will be manning the maximum number of toll-free "800" phone lines to provide rapid responses to questions from candidates and committees. These phone calls always "peak" during the time just prior to an election. The Press Office also handles a stepped-up number of calls and requests during the peak election period, including Freedom of Information requests.

Fiscal Year 1981 includes the peak period of campaign financial activity. It also represents the end of a two-year election cycle. The FEC's statistical publications, the Report(s) on Financial Activity (RFA), are based upon a two-year election cycle. In this case it includes campaign financing during 1979 and 1980. Thus, with the 1980 year-end disclosure reports filed in January 1981, the FEC performs the final data entry and review and analysis functions for the close of the election cycle during Fiscal Year 1981.

Reports Analysis Division staff must deal with the heavy activity during the reporting periods just prior to the general election, and then code, enter, and review the data closing out the election cycle. Data Systems staff must maintain the FEC's disclosure data base, assist in computer aided compliance actions, and help produce the RFA.

Finally, the Audit Division must receive sufficient resources to rapidly close out the primary matching fund certification and audit processes during Fiscal Year 1980. Of equal importance, the audits of the recipients of federal funds in the presidential general election campaign must be quickly completed. The FEC has committed significant resources this Fiscal Year to prepare for more efficient and timely completion of the 1980 presidential audits. Such preparatory efforts would be frustrated unless there is proper funding in Fiscal Year 1981 to complete this undertaking.

The details of the FEC's programs and procedures are contained in the Decision Packages and justification submitted to this committee in conformance with OMB circular A-11. Following is a brief description of the Decision Packages and a justification for the resources requested.

OFFICE OF GENERAL COUNSEL

The Office of General Counsel has two major objectives: interpretation of the FECA and the FEC's regulations and providing legal policy guidance to the Commissioners, the staff, candidates, committees and other persons covered by the FECA; and enforcement of the FECA and FEC determinations.

Decision Packages #2, #5, #11 and #12 in the Fiscal Year 1981 Budget Request provide staff resources for the Office of General Counsel identical to the Fiscal Year 1980 level. Additional funds are requested in Packages #17 and #18 to meet the increased enforcement and litigation caseload recently experienced, and projected for the completion of the presidential election cycle.

Enforcement

The FEC has experienced a steady increase in its enforcement caseload over the last few fiscal years. The number of enforcement cases opened in 1976 and 1977 combined was 410; 302 were opened in Fiscal Year 1978 alone, 391 in Fiscal Year 1979. In addition, the complexity and sophistication of cases is increasing: in 1976, the FEC found no reason to believe a violation had been committed in 70% of the cases opened that year; in 1978, that determination was reached in only 50% of the cases; and in 1979, less than 20% of the cases resulted in a no reason to believe finding.

A major factor in the increased enforcement activities is the growth in the number of cases which arise in the normal course of the FEC's activities. In Fiscal Year 1978, three times as many enforcement actions were generated from internal sources as in the previous two years. In Fiscal Year 1978, 231 cases were generated internally as opposed to between 70 and 80 each in 1976 and 1977. This increase in internal enforcement activity continued into Fiscal Year 1979, when 251 cases were opened.

Due to the continued growth in internal cases, the historical record of increased external complaints just prior to an election, and the increased sophistication of complaints, the FEC requests additional funds in Fiscal Year 1981 to maintain existing staff levels in external enforcement, while providing for the expected internal enforcement cases during a presidential election year.

Litigation

During the first few years of the FEC, the legal staff devoted major efforts to drafting and prescribing regulations. FEC enforcement efforts were focused on externally generated complaints (i.e. from candidates, the public, and other interested parties), and satisfying the requirement that these complaints be addressed within 90 days (now 120 days in the new amendments). Most of the litigation efforts were defensive and devoted to defending the FECA, the FEC and its policies from legal challenges.

By 1977 and 1978, however, it became necessary for the FEC to commit more resources to offensive litigation, that is, litigation resulting from enforcement activity which cannot be resolved through conciliation. Since the beginning of Fiscal Year 1978, the FEC has filed 27 such cases.

The increasing sophistication of the review procedures has resulted in an increase in internally generated enforcement actions. In addition, as the FEC's discretionary audit policy was implemented, the amount of audit related enforcement activity has also increased.

It should be reemphasized that the FEC does place a priority on facilitating voluntary compliance with the FECA through conciliation. However, in instances where conciliation fails to successfully resolve enforcement matters, litigation must be an available option. With limited resources, decisions about which cases to litigate must be made on budgetary grounds. Such a rationale necessarily results in "selective" enforcement. About 3% of all enforcement cases reach litigaton. The number of suits which arise from external complaints and the number which are internally generated cases are proportionally equal.

During Fiscal Year 1978 and 1979, when the litigation caseload was growing substantially, the overall staffing level of the Office of

General Counsel remained constant. To accommodate the increased litigation workload, reallocations were made within the General Counsel's Office budget. In Fiscal Year 1980, a few additional positions were made available for litigation. Additional litigation resources are requested by the FEC in Package #17 for Fiscal Year 1981, and will provide for litigation at a level deemed necessary to adequately ensure substantial compliance with the FECA.

Policy and Interpretation

To date, the FEC has been able to release advisory opinions, review audits for legal questions, and terminate enforcement actions in a relatively timely manner. However, faced with greater caseloads, an increase in the number of substantial and complex cases, coupled with an ever increasing commitment of resources to both offensive and defensive litigation, the FEC must request additional policy resources for the General Counsel's Office for Fiscal Year 1981. Without these additional resources, the ability of the FEC's legal staff to speedily and effectively enforce the FECA will be impaired.

Specifically, Package #18 provides for additional audit review staff in the Office of General Counsel. This would permit timely legal review of presidential audits without impairing the capability to provide rapid turnaround for advisory opinions and other policy matters.

It should be noted that Packages #25 and #26 would provide the resources to fully and rigorously enforce the late and non-filing provisions of the statute. In addition, the resources contained in those decision packages would be necessary to handle the enforcement and litigation caseload resulting from 100% review of all disclosure reports by Reports Analysis (Package #23). The FEC did not request funding for these two packages.

AUDIT DIVISION

The Audit Division has primary responsiblity for perhaps the most important FEC activity during a presidential election year: the certification and disbursement of federal matching funds. In Fiscal Year 1981, the Audit Division will place its priority on the public financing program.

Presidential Public Financing

The FEC requests sufficient audit staff to enable the completion of the audits of receipts and disbursements of all presidential primary candidates who requested and received federal matching funds.

Implementation of the public financing provisions requires that all eligible candidates receive federal monies to which they are entitled as rapidly as possible during an election campaign. Yet, the FEC is also charged with certifying the release and monitoring the proper expenditure of those federal funds. This requires an adequate commitment of staff and resources in Fiscal Year 1981 to assure the rapid completion of the audit process.

In Fiscal Year 1981, the audit staff will also complete the audits of the 1980 general election recipients of federal funds. Resources to complete these programs are contained in Package #3.

Discretionary Audits

In Fiscal Year 1981, the Audit Division will not limit its efforts to the public financing program but will continue to develop and implement the FEC's discretionary audit policy. Although the FEC has placed priority on the matching funds process, it is important to continue a broad overall audit program as a vital portion of the regulatory mission. Audits are to be performed on all categories of filers (candidates, party committees, multicandidate committees, etc.) based on compliance thresholds to be established by the FEC.

The FEC is presently in the process of prescribing regulations and forms to implement the 1980 Amendments (P.L. 96-187). As a result of these amendments, which effectively barred the use of random selection for candidate committees, new thresholds and procedures will also have to be developed for selection of committees for audit.

The FEC has committed significant resources to the discretionary audit program as a tool to promote full public disclosure of campaign finance activity.Audits serve a two-fold purpose: they verify compliance with the FECA, particularly the disclosure provisions; and they educate and assist filers to help them improve their ability to comply with the FECA.

In past fiscal years, limited resources have precluded funding for the Audit Division at a level sufficient to implement a significant portion of FEC policy. Decision Package #19 of the FY 1981 budget request would provide sufficient funds to expand the level of effort across the full range of categories of filers as anticipated by FEC audit policy. This package provides an increase of 17.5 positions and $370,742 over current levels (Packages #3 and #13).

REPORTS ANALYSIS DIVISION

The Reports Analysis Division was established in January of 1978 with two major objectives: the production of statutory indices of documents filed, as well as various other lists required by the FECA, including updated listings of qualified multicandidate committees, and of authorized committees which failed to file required reports, i.e. non-filers; and basic review and analysis of disclosure documents filed in accordance with the FECA.

These objectives are central to the FEC's regulatory mission. The Reports Analysis Division performs the vital function of data coding and entry into the computerized information system operated by the Commission. This data entry produces both the statutorily required indices, and the numerous other indices which promote public disclosure and enhance the ability of the FEC staff to enforce the FECA.

The basic review of campaign finance reports is also vital to the ability of the FEC to enforce the FECA. Reports analysts are in constant contact with committees and candidates to assist them in properly filing required reports. The analysts are also responsible for detecting possible reporting discrepancies and surface violations of the FECA.

Possible enforcement actions noted by the Reports Analysis Division are referred to the Office of General Counsel. Filers who appear to require audits are referred to the Audit Division. These review and compliance processes are the foundation of the FEC's internal enforcement efforts. The Fiscal Year 1981 budget request provides adequate resources to continue the ability of the Reports Analysis Division to perform the necessary data entry functions for all candidates and committees.

However, the requested level of resources will only allow the FEC to review those reports that meet certain thresholds for campaign finance activity. Such thresholds must be established by the FEC. Using such a system, the resources requested in Decision Packages #6, #10 and #15 would allow the FEC to review the most significant campaign finance activity. However, the additional funding of Package #23 would be necessary in order to review 100% of all disclosure reports. The FEC did not include these resources in its request of $11,530,160.

INFORMATION DIVISION

The FEC is committed to an aggressive outreach program to provide information to all filers, the public, and the media. The public information and publications branches produce informational mailings to provide guidance preceeding filing periods. A trained staff provides prompt answers to questions both by written response and over the Commission's toll free "800" lines.

The FEC also publishes and disseminates a monthly newsletter, the Record, and Campaign Guides for specific categories of filers. In addition, the Information Division constantly revises and updates publications of the Act and the regulations to reflect any legislative changes, plus provides an extensive index to the regulations and advisory opinions.

These efforts, plus the selected use of speaking engagements and seminars combine to achieve the Commission's objectives of providing all possible information to the regulated public and to promote and facilitate voluntary compliance with the FECA. The Fiscal Year 1981 budget request continues these programs at a minimal level necessary for a presidential election year in Packages #4 and #14.

Decision Package #16 provides additional resources for the publication staff to prepare the statutorily mandated report on the 1980 election, and to upgrade the FEC Press Office. High usage of the Press Office by the media, coupled with a significant increase in Freedom of Information Act requests, necessitated additional resources for the Press Office in Fiscal Year 1981.

CLEARINGHOUSE

The Clearinghouse on Elections Administration provides informational and educational aid to elections officials throughout the nation. The Clearinghouse grants and oversees research contracts, and performs oversight of the contractor's efforts. The results of the research are then disseminated to state and local officials through publications and workshops at regional seminars. The FEC budget request for Fiscal Year 1981 continues these efforts in Packages #4 and #14.

PUBLIC DISCLOSURE DIVISION

A priority objective of the FEC has been to make the disclosure documents on campaign finance available to the public to the greatest extent possible. To achieve this objective, the FEC has operated a Public Records Office which provides access to paper and microfilm copies of disclosure documents filed under the FECA. In addition, the Public Records Office makes available copies of audit reports, closed compliance actions, closed litigation efforts, and various FEC policy statements such as advisory opinions.

Access to these documents is facilitated by a small, but well trained staff who answer requests, fill orders for materials, and help walk-in visitors find the documents they desire. The staff makes extensive use of the computer indices required by the statute. Many other indices are also used that have been developed by the Data Systems Development Division and made possible by the data entry efforts of the Reports Analysis Division. The FEC computer system is invaluable in giving greater access to information by the public.

In January 1978, the Public Records Office and the microfilm processing staff were reorganized into a separate unit, the Public Disclosure Division, in order to promote greater public access to disclosure documents. The Fiscal Year 1981 budget request permits this Division to meet increasing public demand for the services of the Public Records Office during a presidential election year. Packages #4 and #14 maintain levels of service from Fiscal Year 1980. One additional staff position is added in Package #16 to keep up with the workload caused by increased public use of the Public Records Office.

DATA SYSTEMS, ADMINISTRATION, PLANNING & MANAGEMENT

The support offices of the FEC provide the staff with the physical resources and services to enforce the FECA and carry out its regulatory mission. The Administration Division has made great advances to make the FEC administratively self-sufficient. This has resulted in better, more rapid service to FEC staff at a lower cost.

The Data Systems Development Division oversees the procurement and operation of the computer system. This system produces the statutorily mandated indices, which are invaluable both for enforcement of the FECA and for public disclosure of campaign finance information. In addition, the computer system has enabled the FEC to approach self sufficiency in its administrative services. Finally, Data Systems staff has responsibility for the production of the Report on Financial Activity (RFA).

In Fiscal Year 1980, the Data Systems Division has assisted in the public financing process by providing presidential candidates the option of submitting requests for federal matching funds by computer tapes. This option has benefitted both the candidates and the FEC, and has strengthened and streamlined the certification process. In addition, Data Systems has continued efforts on a pilot project to permit filing of disclosure reports (FEC Form 3) on computer tape. This study will be continued into Fiscal Year 1981.

Planning and Management has the responsibility to direct and coordinate staff development of Management Plans and budget requests. A prime objective of this staff is the maintenance of the Management Information System (MIS). Through Management Reports generated by the MIS, the FEC monitors the allocation of resources to determine if policy decisions are correctly implemented and if objectives are being achieved. In Fiscal Year 1979 and 1980, the planning staff began performing a series of program evaluations to determine if FEC programs are achieving their objectives efficiently and effectively. The first of these reviews was completed in November 1979.

The Fiscal Year 1981 budget requests for these support offices are adequate to continue the level of services maintained in Fiscal Year 1980, and are contained in Packages #7, #8 and #9. The requested increases over Fiscal Year 1980 include funds for Administration to provide for the additional space, equipment and supplies necessitated by requests for additional personnel contained in other packages. Therefore, Package #21 includes adequate resources to enable the FEC to acquire and occupy a facility sufficient to house the additional 34 positions requested in Packages #15 through #20.

In addition, Package #20 provides $61,642 to enable the FEC to replicate a survey conducted in 1977 to monitor the impact of the FECA and the FEC on the 1976 elections. This survey would be conducted in 1981 and would review the FECA's impact on the 1980 elections.

FY 1980 SUPPLEMENTAL

The Federal Election Commission is also requesting authorization for a supplemental appropriation of $140,000 which would be in addition to the $410,000 supplemental requested to provide for the October 1, 1979 government wide pay raise. This represents the first such request ever made by the FEC, and is the result of three major factors: enactment of the 1980 amendments to the FECA, P.L. 96-187; extraordinary inflation in the cost of microfilm print processing; and marked increases in the cost of *Federal Register* printing.

The requested $140,000 authorization and appropriation does not include any additional funds for personnel. It consists solely of funds for items such as printing, mailings, reproduction, telephone, and microfilm prints, plus some travel for additional seminars to assist filers in complying with the amended statute.

Enactment of the 1980 amendments will require the FEC to incur additional expenses for printing proposed regulations in the Federal Register. In addition, the FEC will incur additional expenses in expanding informational outreach efforts for explaining changes in the law to regulated entities.

The Government in the Sunshine requirements necessitate the heavy use of the Federal Register by the FEC for publishing policy decisions, meeting notices, and proposed regulations. In January 1980, the cost of publishing in the Federal Register increased by 16%. This, plus the enactment of the FECA amendments, has created an overrun for publishing costs in Fiscal Year 1980.

Finally, the spiraling cost of silver has led to extraordinary increases in microfilm print processing costs. Prints of disclosure docments from microfilm are essential for compliance with the 48 hour statutory deadline for making documents available for public viewing and copying.

In conclusion, we urge the approval of this one time request for a very minimal $140,000. This amount is necessary to ensure the ability of the FEC to fulfill its public disclosure obligations, and to fully inform candidates and committees of the amendments to the FECA during Fiscal Year 1980.

Mr. TIERNAN. Thank you, Senator.

To my right is Commissioner Frank Reiche, one of the newest members of the Commission. To his right is Charles N. Steele, the General Counsel for the Commission since December 6, 1979, and who has been on the staff since 1976. To my immediate left is Mr. Potter, who is the Staff Director of the Commission. Also in the audience are Commissioner Aikens and Commissioner Friedersdorf.

Senator DECONCINI. We welcome all of you.

Mr. TIERNAN. Senator, as you have indicated, our request for fiscal year 1981 is $11,530,160, providing for 309 permanent positions. This is the request the Commission feels will be absolutely necessary for fully implementing the Federal Election Campaign Act of 1971, as amended.

Also, as you have indicated, we have sought, for the first time, a supplemental appropriation for fiscal year 1980 of $140,000, plus a general pay increase supplemental request of $410,000. The particular supplemental request for $140,000 is a result of two occurrences. The passage of the new amendments that were signed into law by President Carter on January 8 of this year necessitated, first of all a rewrite of the regulations, and, second, the printing and publication of the new statute for the use of campaigns, political committees, and other people that are affected by the act. For example, the publication of the regulations in the Federal Register cost almost $18,000. We had no way of including this in the original budget request for 1980. We will be in serious trouble at the end of this fiscal year 1980, right in the middle of this fall's general elections, if we do not receive this full request of $140,000, plus the $410,000 pay increase, which again we were not in the position to do anything about. This Federal pay increase was imposed by the Congress.

Those are the highlights as set forth in the full statement. We point out some of the significant additional duties that have been placed on the Commission. The 1980 amendments would reduce the number of reports that would be required to be filed with the Commission. In addition, the limit for itemized entry of contributor information was increased from the $100 to the $200. But the total financial activity is still the same for the 2-year cycle.

Also, I would point out we have had a tremendous increase in the number of political action committees that have filed with the Commission. When the Commission was established, there were something like 450 political action committees in existence. Now we have over 2,000 entities registered, and some of those are very substantial. They do have to file with the commission. Most of these committees are now filing on a monthly basis. Our staff has to review those reports and propose additional steps to be taken for enforcement or compliance, when any matters picked up by this review are referred to the General Counsel's office.

We would be pleased to answer questions.

Senator DECONCINI. Who reviews those PAC filings? Are they CPA's or regular staff people?

Mr. TIERNAN. The initial review of political action committee reports is done by our Reports Anaylsis Division. Those individual employees in RAD are not CPA's or accountants, and they are not required to have any specific educational background in accountancy. However, they have been highly trained in reviewing the reports, and we use them in conjunction with the data processing programs that we have developed at the Commission.

Senator DECONCINI. It is estimated, Mr. Chairman, that the FEC regulates an industry which you could call the campaign finance industry that is well in excess of $400 million a year. How many CPA's do you have on your staff?

Mr. TIERNAN. At the present time we have four certified public accountants; two are in the Audit Division, and two are in other positions within the Commission. I would point out that we retained the Arthur Anderson accounting firm to come in and review the Commission's Audit Division and procedures because of the criticism we received as a result of the 1976 Presidential audits. They reviewed the audit staff and program and made some recommendations. We have implemented most of those recommendations. And one question I specifically asked the representative from Arthur Anderson at a regular public Commission meeting is whether or not it was necessary that we have CPA's in our Audit Division. The response was that it was not necessary, that the requirement of 24 hours of training in accountancy that we require for our auditors is adequate. We had some recommendations for more specialized inhouse training. Because of limitations on resources, however, that suggestion is going to be difficult to achieve for the balance of this year. But we feel that the staff is adequate and in a present position to do a good job for the Presidential election for 1980.

Senator DECONCINI. The Anderson report indicated a number of things. One is that the division is continually understaffed, the average starting salary and career paths are inferior to competing governmental and private sector jobs. Has there been any formalized change in the recruiting program in an effort to attract more qualifed staff?

Mr. TIERNAN. Yes; we increased the starting level from GS-5 to GS-7. We also undertook some training programs.

Senator DECONCINI. When did that occur?

Mr. TIERNAN. During 1979 and on into 1980. The staff is now at full complement. And we have had some specialized training in statistical sampling, particularly for those employees who would be involved in Presidential audits.

Senator DECONCINI. We note that you have requested an increase of $629,000 and 18 positions. Has the administration included any of this increased funding in its recommendation?

Mr. TIERNAN. No, it hasn't. OMB simply notified us of the amount of money they were going to include in the President's budget, but they didn't indicate what programs should be eliminated or reduced, or where to make the cuts. We established our budget request on the basis of zero-based budgeting, just as we were directed by OMB to do, but all we got back from OMB was a specific dollar amount that they were going to include. The first amount was $9.4 million and then later that figure was reduced to the $9.2 million figure. So we have to go back to our ZBB budget submission and go up the ladder through our packages. That means that at about package No. 11, and from that point out, we would have to cut out those programs. That would include those 18 additional auditors we sought.

Senator DeConcini. Do you have a priority between additional resources for public financing audit requirements as opposed to discretionary audit efforts?

Mr. Tiernan. The priority is with the Presidential campaigns and publicly financed candidates. With any publicly financed candidate, we are mandated to do audits on those candidates. We do those required audits, and then with any remaining audit resources, we would try to carry out the discretionary audit policy. We have requested funds for the discretionary program. We feel it is necessary that we do have that ability to conduct audits other than just those that we have to conduct with regard to the candidates receiving public moneys. If we didn't have that capacity, we would not be able to audit any other candidate for the Presidency if he did not accept any public funds, and some of those candidates do expend a considerable amount of money. Also, if we would get a complaint about some non-Presidential candidate, or some other type of political committee, we would not be in a position to conduct an audit, even if we felt it had to be done.

Senator DeConcini. According to the budget justification material, the Commission is currently in the process of revising the audit selection procedures, to be based on compliance thresholds resulting from initial review activities. This means that the FEC will focus its audit resources on those cases most likely to be in violation; is that correct?

Mr. Tiernan. That is correct.

Senator DeConcini. What is the threshold criteria the FEC is currently considering?

Mr. Tiernan. The proposal for establishing those thresholds will be before the Commission on Tuesday and Wednesday of next week. The Commission has not established those thresholds yet. There are some differences of opinion as to what thresholds we are going to establish.

Senator DeConcini. Do you anticipate establishing them?

Mr. Tiernan. We are in the process. We will begin to firm it up on Wednesday. We will take it up Tuesday at the earliest and then take it up again in executive session on Wednesday.

Senator DeConcini. The nature of the Commission's work, based on elections, you obviously have peaks and valleys as to your caseload; is that correct?

Mr. Tiernan. The strange thing is that I felt when I first went on to the Commission that that is exactly what would happen. But, as a matter of fact, it has proved to be very level. There are peaks and valleys in the sense that Presidential elections are every 4 years and congressional elections are every 2 years. However, the work that is generated out of those peak elections flows through the next year and fills in the valleys. For example, we don't like to get into Presidential audits until the candidate concludes his efforts for the Presidential nomination. The same thing is true with the general election. Now under the new election law, we are going to have to commence an audit of any congressional candidate within 6 months after the election. That may tend to create some peaks. But frankly, we try to flatten out the workload over the 2-year and 4-year cycle.

Senator DECONCINI. We have other questions that we will submit to you for you and the General Counsel to answer. Thank you very much.

Mr. TIERNAN. Thank you, Senator. We will be pleased to answer the additional questions.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

FEDERAL ELECTION COMMISSION

PRESIDENT'S BUDGET PROPOSAL FOR FEC IS $2.1 MILLION LESS THAN FEC REQUEST

FEC HAS REQUESTED A BUDGET OF $11,530,000 TO FUND 309 POSITIONS, THIS IS $2,247,000 AND 32 POSITIONS MORE THAN RECOMMENDED BY THE PRESIDENT. THE PRESIDENT'S RECOMMENDATION FOR FEC REPRESENTS AN 8% FUNDING INCREASE WHILE THE FEC REQUEST REPRESENTS A 33% FUNDING INCREASE OVER THE LEVEL APPROVED FOR FEC FOR FISCAL YEAR 1980. SPECIFICALLY, WHAT ITEMS OR PROGRAMS COULD NOT BE FUNDED IF THE BUDGET LEVEL RECOMMENDED BY THE PRESIDENT IS APPROVED BY THE CONGRESS?

The difference between the Commission's budget request of $11,530,160 and the President's budget request of $9,283,000 as it relates to programs can be discussed in two phases: the impact in terms of the Commission's full request; and the impact in terms of the Commission's ability to continue levels of activity from Fiscal Year 1980 into 1981 to fulfill its responsibilities under the Federal Election Campaign Act of 1971, as amended (FECA), with respect to the 1980 elections.

In order to maintain its present levels of activity the Commission would require funding of Decision Packages #1-#14, or a total of $9,864,644. The Commission's full budget request of $11,530,160 includes Decision Packages #15-21, which represent programs and resources requested above and beyond the Commission's activity in Fiscal Year 1980. The programs represented include: 7 additional personnel for enforcement and litigation to meet the expected increase in caseloads for offensive litigation, defensive litigation, and both external and internal enforcement actions as a result of the 1980 elections; 2 additional personnel in audit review to speed up the legal review of audits and of the policy questions arising in the public financing programs; additional resources for the Public Records, Press, and Public Communications staff to upgrade outreach efforts and to enable the Commission to handle increased demands for information during the 1980 elections; 3 additional positions in the Reports Analysis Division to provide an increased capability for in-depth analysis and review of disclosure reports; 17.5 positions in the Audit Division to provide adequate resources to enable completion of the Commission's full discretionary audit policy; $50,000 in contract funds and one position in Planning and Management to replicate the 1976-77 survey on the impact of the FECA and the FEC on the election process; and sufficient funds to provide for the supplies and equipment required by the additional personnel provided for in Packages #15-20, plus acquire the additional space to house the personnel.

The President's budget figure of $9,283,000 would not only exclude the activities contained in Packages #15-21, it would also reduce the Commission's current programs by eliminating the funding for Decision Packages #12, 13, 14 and most of #11. These packages represent programs and resources necessary to carry out the activities of the Commission consistent with Fiscal Year 1980. In other words, the President's budget eliminates packages which would result in the following reductions from Fiscal Year 1980: almost 15 positions in the Office of General Counsel required to maintain existing staffing levels for offensive litigation and the internal enforcement efforts of the Commission; 4 positions required to maintain existing staffing levels for legal policy areas such as advisory opinions, regulations, legal policy, and audit review; sufficient funds to maintain Fiscal Year 1980 policies of free publications (the Statute, Regulations, Campaign Guides, etc.) available upon request and for an outreach program in Public Communications; sufficient staff to maintain existing levels of service in Public Records; and 4 positions in the Audit Division required to maintain existing staffing levels for audits. (See Attachment I.)

Such a reduction in staff, however, would severely impair the Commission's ability to implement and enforce the FECA. Therefore, rather than eliminate the personnel in Packages #14, 13, 12, and most of 11 resulting in a cut back in current programs, the Commission would attempt to find economies for non-personnel items. A reduction of the Commission's budget from $9,864,644 to $9,283,000 as recommended by the President would require $581,644 in cuts.

There is no feasible way to reduce non-personnel costs by this amount without virtually destroying the ability of the Commission to provide needed support services for the staff required to implement the FECA at the level achieved in FY 1980.

A preliminary analysis of possible non-personnel cuts would be as follows:

$350,000	in Support Contracts and Dissemination of Research Reports
$231,644	in Supplies, Materials, Equipment, Printing, and Travel
$581,644	TOTAL

There are serious problems with such proposed non-personnel cuts, however. The impact upon the Commission would be two-fold:

(1) A virtual elimination of the research contract capability of the Clearinghouse on Elections Administration after a very significant reduction in this activity in FY 1980 due to limited funds.

(2) A very serious impact on the ability of the Commission's Administration Division to supply support materials and equipment for staff, particularly after major reductions in service in FY 1980.

IN A QUALITATIVE SENSE, WHAT WOULD BE THE DIFFERENCE IN THE PROGRAM THAT FEC COULD DELIVER AT THE REQUESTED LEVEL AS COMPARED TO THE LEVEL RECOMMENDED BY THE PRESIDENT?

In qualitative terms, the President's budget request will not allow the Commission to maintain existing staffing levels (Fiscal Year 1980) in areas such as: enforcement, litigation, advisory opinions, audit reviews, legal policy audits, public information and public records, and reports analysis. In addition, existing levels of service in such areas as public records, the "800" lines, publications, seminars on campaign finance, and other informational outreach efforts could not be maintained.

The President's budget would mean that the Commission would have to abandon its policy of providing unlimited free copies of the Statute, the Regulations, Campaign Guides, and other publications upon request. At most, each registered committee would receive one free copy upon request, with additional copies available for purchase from the Government Printing Office.

The President's budget would also mean that the Commission could not replicate the survey completed in 1977 which measured the impact of the FECA and the FEC on the election process. This could prove to be a most useful tool in measuring the impact of the 1979 Amendments, P.L. 96-187, on the 1980 elections.

In conclusion, the President's budget would mean reductions in the Commission's level of service to the public in an election year: the election itself and the three largest reporting periods just prior to and after the election occur in Fiscal Year 1981. The President's budget has a significant qualitative impact upon the Commission's operations, and could jeopardize the timely resolution of enforcement and litigation matters, as well as the issuance of advisory opinions, just prior to the election.

MATCHING FUNDS

HOW MANY CANDIDATES HAVE QUALIFIED SO FAR FOR MATCHING FUNDS?

Ten presidential candidates requested and were declared eligible to receive matching funds at some point in the 1980 election. They are: Senator Howard Baker, Senator Robert Dole, former Governor Ronald Reagan, Representative Philip Crane, Representative John Anderson, and the Honorable George Bush on the Republican side. President Jimmy Carter, Senator Edward Kennedy, Governor Jerry Brown, and Lyndon LaRouche qualified on the Democratic side.

WHAT IS THE MATCHING FUND LIMITATION FOR EACH CANDIDATE IN THE PRIMARIES?

The matching fund limitation per candidate in 1980 is $7,360,000 in the primary election. This is $5,000,000 adjusted by the Consumer Price Index or CPI, with a base year of 1974.

WHAT IS THE SPENDING LIMITATION ON PUBLIC FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS?

The spending limitation for publicly financed presidential nominating conventions is $4,416,000. This represents $3,000,000 adjusted by the CPI, with a base year of 1974.

WHAT ARE THE CRITERIA THAT A PRESIDENTIAL CANDIDATE MUST MEET IN ORDER TO QUALIFY FOR MATCHING FUNDS?

To be eligible to receive matching funds, a candidate must certify by letter to the Commission that the candidate:

1. seeks the nomination of a political party;

2. has not and will not incur qualified campaign expenses in excess of the expenditure limitations;

3. will expend federal funds only for qualified campaign expenses;

4. has received over $5,000 in contributions of no more than $250 per individual from residents of each of at least 20 different states; and

5. will maintain records as required by the FEC and will agree to an audit and repayment of amounts required to be repaid.

Upon receipt of this letter, the Commission reviews the candidate's threshold certification request to determine that the candidate has indeed received over $5,000 in 20 different states comprised of contributions of not more than $250 from any individual. Once the candidate's threshold eligibility has been determined, he may submit further requests for matching funds on a bi-weekly basis.

A candidate is ineligible for further matching payments if he ceases to actively campaign in more than one state. A candidate is also rendered ineligible for further matching payments 30 days after the date of the second consecutive primary in which the candidate actively campaigned but received less than 10 percent of the vote. A candidate who has been determined to be ineligible for matching funds may be reinstated if the Commission subsequently determines he is actively campaigning in more than one state (if ineligible because he ceased to actively campaign in more than one state) or if the candidate receives 20 percent of the vote in a subsequent primary (if ineligible for failing to receive 10 percent of the vote in two consecutive primaries).

FEC PLAN FOR THE 1980 PRESIDENTIAL ELECTION

LAST YEAR THE COMMITTEE WAS TOLD THAT THE 1980 ELECTION WILL BE THE FIRST PRESIDENTIAL ELECTION FOR WHICH THE FEC WILL HAVE HAD AN OPPORTUNITY TO FULLY PREPARE. FEC'S ANNUAL REPORT FOR 1978 REFERRED TO FEC'S MASTER PLAN FOR ADMINISTERING THE 1980 PRESIDENTIAL ELECTION. PLEASE DESCRIBE FOR THE COMMITTEE THE KEY ELEMENTS OF THAT MASTER PLAN.

The key elements of the Commission's Master Plan for the 1980 presidential election involved the development of teams of FEC staff to deal with specific presidential candidates. A team consisting of an auditor, reports analyst, and legal staff from the Office of General Counsel was targeted for each potential and identified presidential candidate whose campaign financial activity exceeded $100,000.

The audit team performs the threshold certification to determine eligibility for matching funds, processes all subsequent matching fund request submissions, performs the threshold audit of the candidate's committee, and will perform the post-primary audit. For those candidates in the general election, the same audit team will perform the post-general election audit.

Therefore, each candidate will be handled by one team of auditors for the entire election process. This audit team is aided and assisted by reports analysts who are assigned to specific candidates, and who review their disclosure reports on an ongoing basis. The audit team is also assisted by specific legal staff assigned to the public financing process.

Because of experience gained in the 1976 elections, the Commission determined that each qualified presidential candidate who received matching funds would receive a threshold audit. This audit would include a full review of the records and internal controls of the candidate's committee. These threshold audits were designed to perform an educational function, which would aid both the candidates and the Commission.

Also, the Commission has enabled candidates to submit matching fund requests on a bi-weekly basis to ensure frequent and rapid payments of federal funds to which the candidate may be entitled. In addition, the Commission has allowed candidates to submit matching fund requests on computer tapes--readable from the candidate's computer system to the Commission's computer system. The Data Systems and Audit staffs have worked closely with candidate committee staffs to promote the smooth functioning of this program, which has speeded the certification process.

The Commission, provided a comprehensive systems manual for use by candidates receiving matching funds. This manual was prepared by Audit staff assisted by a consultant who had served as the controller for a major presidential candidate in 1976. This extremely detailed manual provides guidance for developing a financial recordkeeping system to comply with the Federal Election

Campaign Act and the Commission's regulations to ensure proper compliance and disclosure. A similar manual for the general election candidates is also a key element of the Master Plan.

Finally, in the area of disclosure, the Commission has placed priority on the data entry of contributor information for presidential candidates to ensure monthly production of the Report on Financial Activity (RFA) for Presidential Candidates, prior to the election itself. This timely release of statistics will help the public and the media to monitor the 1980 presidential election, one of the major aspects of the disclosure provisions contained in the law.

IS FEC ADEQUATELY PREPARED TO HANDLE THE WORKLOAD CREATED BY THE 1980 ELECTIONS?

The Commission, provided it receives the full amount of its requested supplemental, is adequately prepared to handle the workload of the 1980 elections. Faced with limited funds, the Commission has been forced to live within an extremely tight support budget to ensure adequate staff resources to implement the FECA in an election year. If, however, the Commission does not receive the $550,000 requested in its supplemental, it will have to make cutbacks to its planned outlays for the remainder of the fiscal year which may result in the Commission not being adequately prepared to handle its workload for this year.

The Commission believes that it is "on track" in monitoring the 1980 elections. The matching fund certification process has proceeded smoothly, with most of the threshold audits of presidential candidates complete. Several of these threshold audits became post-primary audits when candidates lost their eligibility for matching funds early in the campaign. The Commission should achieve its goal of release of post-primary audits of the two nominees by January 1, 1981 and the two major party candidates for the general election by July 1, 1981.

All candidates have received the primary systems manual, and several have availed themselves of the ability to submit matching fund requests by computer tape. The general election systems manual is pending the finalization of the revised general election regulations. Both major party general election candidates should receive this manual shortly.

The Commission has produced monthly releases of the presidential RFA to provide the public and the media with pre-election statistics. The Commission has also completed the redrafting and promulgation of regulations which were amended subsequent to the enactment of P.L. 96-187, the 1979 Amendments to the FECA. The enactment occurred on January 8, 1980. The Commission also revised the disclosure forms in time for the April 15, 1980 quarterly filing date. In sum, the Commission has responded to these election year Amendments in a rapid fashion.

The revised copies of the Act (the FECA) and regulations are also available for public use. The Commission believes that it has responded rapidly and well to changes in the FECA, and has assisted candidates and committees in complying with the new law.

Although the Commission has been able to cope with the workload thusfar; our budget plans for the 1980 elections were made before the 1979 Amendments to the Act were enacted. Efforts to implement those amendments have resulted in significant unforeseen costs. Additionally, the extraordinary increase in the cost of microfilm during FY 1980 (due to the dramatic increase in silver prices) has drained funds originally budgeted for other activities. The Commission has also been required to give a 7% pay increase to its employees for which funds were not appropriated. If the Commission is to successfully handle the 1980 elections, it is essential that it receive supplemental appropriations to cover these costs.

Because the 1980 elections fall in Fiscal Year 1981, much of the costs of the FEC's 1980 election activities, especially in the areas of audit and enforcement, must be paid from our FY 1981 appropriation. It is therefore vital that we receive an appropriation adequate to meet the demands placed on this agency. An inadequate appropriation would severely impair the Commission's capacity to handle the 1980 election workload.

DUTIES OF FEC

FEC ADMINISTERS THE LAW WHICH PLACES LIMITS ON CAMPAIGN EXPENDITURES ON CONTRIBUTIONS TO POLITICAL CAMPAIGNS. FEC ALSO ADMINISTERS THE PROVISIONS OF THE LAW WHICH PROVIDE FOR PUBLIC FINANCING OF PRESIDENTIAL PRIMARY ELECTIONS AND PRESIDENTIAL NOMINATING CONVENTIONS. WHAT ARE THE CURRENT LIMITATIONS ON CAMPAIGN EXPENDITURES?

The limitations on expenditures for presidential campaigns are as follows:

$17,664,000 for Presidential Primary Campaigns ($14,720,000 plus 20% for fundraising expenditures).

$4,416,000 for Presidential Nominating Conventions.

$29,440,000 in Federal Funds for Presidential General Election Campaigns, plus legal and accounting expenses which can be raised from private contributions.

In addition, the national party committees are permitted to expend $4,637,000 in coordinated campaign expenditures on behalf of their general election candidates. */ State and local party committees are permitted to expend funds in coordinated expenditures for their party's presidential general election candidate only if designated to do so by the national party.
Note: All of the above figures have been adjusted to reflect the Consumer Price Index as mandated by the Statute.

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*/ This figure is based on $.02 times the Voting Age Population, adjusted by a cost of living increase.

DOES FEC MONITOR CAMPAIGN ACTIVITIES IN AN EFFORT TO HELP ENFORCE THESE LIMITATIONS OR DOES FEC ONLY CONDUCT POST-CAMPAIGN AUDITS?

The Commission monitors campaign activities through review and analysis of disclosure reports to enforce the limitations. In the case of presidential candidates the Commission also conducts threshold audits as soon as practicable after a candidate becomes eligible for public funding. The Commission also responds to externally generated complaints. Both internally and externally generated compliance matters (Matters Under Review, MURs) can lead to enforcement actions up to and including conciliation and/or litigation.

WHAT ARE THE LIMITATIONS ON CONTRIBUTIONS TO POLITICAL CAMPAIGNS BY INDIVIDUALS, CORPORATIONS, POLITICAL ACTION COMMITTEES, AND OTHER GROUPS?

By statute, individuals can contribute $1,000 per election to authorized committees (i.e., candidate committees), and $5,000 to other committees. Qualified multicandidate committees (political party, corporate, labor, interest groups, PAC's etc.) can contribute $5,000 per election to authorized committees per election. (Qualified multicandidate committees must have been registered for six months, have supported five candidates, and received contributions from at least 50 persons). All other committees can contribute $1,000 per election to authorized committees. Party committees also have special expenditure limits depending upon their level: national, state or local; and depending upon the campaign: House or Senate. (See Attachment II.)

Of course, general election presidential candidates cannot accept contributions if they receive federal funds, except to pay for legal and accounting services related solely to compliance with the FECA.

DOES FEC MONITOR THE FLOW OF CONTRIBUTIONS DURING AND PRECEDING THE CAMPAIGN OR ARE FEC'S ACTIVITIES LIMITED ENTIRELY TO POST-AUDIT ACTIVITIES?

As in the presidential campaigns, the Commission monitors campaign finance activity through the review and analysis of disclosure reports, and in responding to external complaints. The Commission's disclosure efforts promote monitoring of activity by the media, the public, and the campaigns themselves.

FURNITURE

HOW MUCH IS INCLUDED IN THE 1981 BUDGET PROPOSAL FOR THE PURCHASE OF FURNITURE? HOW MUCH IS IN THE 1980 BUDGET?

The Commission's Fiscal Year 1981 budget request contains $2,500 per additional requested employee to provide for furniture, materials, and supplies. Therefore, the Commission's request contains approximately $82,000 in costs for 33 additional employees.

This includes not only furniture (desks and chairs) but also supplies, materials and other equipment. In Fiscal Year 1980, the Commission allocated approximately $15,000 for furniture. The Commission does not anticipate significant purchases of furniture in the future, except to provide furniture for new employees.

+$800,000 REQUESTED FOR A NEW BUILDING

FEC HAS REQUESTED AN INCREASE OF $1,051,000 FOR ADMINISTRATION. $800,000 OF THIS REQUEST IS FOR A NEW BUILDING TO HOUSE THE ADDITIONAL REQUESTED EMPLOYEES. DOES FEC PROPOSE TO PURCHASE A NEW BUILDING?

No, the Commission's Fiscal Year 1981 Budget Request includes $650,000 to acquire, make useable, and relocate to a new building. A total of $148,000 would be allocated to provide for the additional rent above and beyond the Commission's current space rental costs.

IS THIS ADDITIONAL SPACE ASSOCIATED WITH THE 33 ADDITIONAL POSITIONS REQUESTED FOR FISCAL YEAR 1981?

Yes, the additional space is directly associated with the Commission's request for 33 additional permanent positions. The Commission's present building could not handle such an increase in staff.

HAS THE ADMINISTRATION PROVIDED FOR ANY OF THESE INCREASES WITHIN THEIR RECOMMENDED TOTAL?

The President's budget for the FEC of $9.4 million provides for 277 permanent employees, the Commission's present staffing level. While we have not received any indications of specific cuts or personnel allocations, it would be reasonable to assume that these increases are not contained in the President's budget.

TURNOVER RATE

LAST YEAR THE COMMITTEE WAS INFORMED THAT FEC HAD A 24% TURNOVER RATE AND MANY PEOPLE ATTRIBUTED THIS HIGH TURNOVER RATE TO LOW STAFF MORALE. WHAT HAS THE STAFF TURNOVER RATE BEEN OVER THE LAST YEAR?

Since the middle of Fiscal Year 1979, the Commission has experienced a turnover rate of approximately 6%. This has held true for Fiscal Year 1980 so far.

LINE ITEM FOR NATIONAL CLEARINGHOUSE ELIMINATED

THE PRESIDENT'S BUDGET PROPOSES TO ELIMINATE THE EARMARKING OF FUNDS SPECIFICALLY FOR THE NATIONAL CLEARINGHOUSE. WHAT IS FEC'S POSITION ON THIS PROPOSAL?

The Commission has always taken the position that a line-item or earmarking in the appropriation reduces the flexibility of the Commission to allocate resources as circumstances may warrant. Therefore, the Commission favors elimination of the earmarking for the Clearinghouse.

HANDBOOK NEEDED FOR POLITICAL CAMPAIGNS

THE ARTHUR ANDERSEN AUDIT STATES ON PAGE 5 THAT ... "EXPERIENCE HAS INDICATED THAT IF A POLITICAL COMMITTEE IS ABLE TO DEVELOP AN ADEQUATE SYSTEM OF RECORDS AND PROCEDURES, THERE IS A GREATER PROBABILITY THAT THE DISCLOSURE REPORTS WILL BE ACCURATE AND AN AUDIT WILL BE GREATLY FACILITATED." BASICALLY, THE FEC SHOULD DEVELOP STANDARDIZED ACCOUNTING PROCEDURES OR AN ACCOUNTING MANUAL FOR POLITICAL CAMPAIGNS.

THE FEC IS IN THE PROCESS OF COMPLETING ACCOUNTING MANUALS FOR PRESIDENTIAL CANDIDATES. WHAT HAS BEEN DONE TO DEVELOP A SIMILAR MANUAL FOR SMALLER CAMPAIGNS AND TO ENCOURAGE ITS USE?

The Commission recognizes that the original Bookkeeping Manual for candidates and committees, developed in 1976, is in need of revision. However, comprehensive revisions were held in abeyance pending the enactment of the 1979 Amendments to the FECA, P.L. 96-187. Since their enactment on January 8, 1980, the Commission has begun revising its Bookkeeping Manual. A manual for authorized committees is projected for completion this fiscal year, with a manual for state and local party committees projected for completion in Fiscal Year 1981.

These manuals are produced with the consultation of experts in the field of political campaigns and campaign finance. In addition, the Commission is revising its Campaign Guide series subsequent to the 1979 Amendments. The Guides are targeted to specific types of committees and, while more general than bookkeeping manuals, do provide helpful information to smaller campaigns. The FEC does not believe that it can impose accounting standards upon committees. However, the Commission does encourage use of all informational publications in its outreach efforts, including the campaign finance seminars. All FEC informational publications are presently available free of charge upon request.

33 WEEK AVERAGE TIME FOR FEC AUDITS

AUDITING IS AN IMPORTANT PART OF THE POLITICAL ACCOUNTABILITY PROCESS SINCE IT PROVIDES INDEPENDENT AND OBJECTIVE JUDGMENTS OF THE CREDIBILITY OF THE DATA FILED WITH THE COMMISSION. TO BE USEFUL, THE AUDIT MUST BE ISSUED ON A TIMELY BASIS AND CERTAIN FINDINGS RELATING TO MAJOR POINTS OF INTEREST. THE AVERAGE ELAPSED TIME OF A FEC AUDIT IS 33 WEEKS. THERE ARE A SERIES OF DELAYS AT MOST POINTS OF THE AUDIT AND REPORTING PROCESS.

HAVE STEPS BEEN TAKEN TO STREAMLINE VARIOUS AUDIT PROCEDURES AND REDUCE THE START TO FINISH TIMES, THEREBY MAKING THE REPORTS MORE TIMELY AND THE USE MORE BENEFICIAL?

Subsequent to the Commission's funding of a study of the FEC audit procedures by Arthur Andersen & Co., and statistical sampling procedures by Ernst & Whinney, the Commission adopted several new audit procedures to streamline the audit process. Several of these procedures grew out of the Arthur Andersen study, others were internally generated. Basically, the Commission has established specific time frames for audits, with deadlines established throughout the audit process.

There are two basic audit tracks: Track A for audits which produce no referrals to the Office of General Counsel for potential violations, and Track B for audits which do produce referrals for the General Counsel's review. The time frames for each are as follows:

Track A--no referral to General Counsel.

Interim report completed two weeks after the completion of field work.

Committee response 35 days after the interim report is completed.

Final report complete 7 days after receipt of committee response received.

Final report reviewed by the Commission within two weeks after final report completed.

Audit report released 5 days after reviewed by the Commission.

The total projected elapsed time is 71 days after the completion of the field work, or 10 weeks.

For audits under Track A in which there are no findings, the interim report is skipped and the following timetable is established: two weeks after completion of field work the final report is complete; two more weeks for Commission review; 5 working days for final release; total projected elapsed time is 33 days or 5 weeks.

For all audits completed under this tracking system in Fiscal Year 1980, 5 of 6 were completed within the time frame projected. The one exception was 10 days late, but the audit work took place over the Christmas and New Year holidays when staff involved were on leave part of the time.

Track B--referrals to General Counsel.

Interim report completed two weeks after field work completed.

Office of General Counsel legal analysis complete two weeks after interim report completed.

Staff Director and Commissioner review complete two weeks after legal analysis completed.

Report transmitted to committee within one week. The committee response received within 35 days.

Final report released within 7 days of return of report from the committee.

The total projected elapsed time is 91 days after the completion of field work, or 13 weeks.

Only one audit has been completed under this track to date.

ADVISORY COMMITTEE ON FEDERAL PAY

STATEMENT OF LILY MARY DAVID, CONSULTANT TO THE ADVISORY COMMITTEE ON FEDERAL PAY

PREPARED STATEMENT

Senator DECONCINI. The committee will now receive testimony from the Advisory Committee on Federal Pay regarding the fiscal year 1981 budget request of $190,000. The committee is pleased to have Ms. Lily Mary David, Consultant to the Advisory Committee on Federal Pay, with us today to present this testimony.

Ms. David, your full statement will be printed in the record. We would appreciate your giving us the highlights.

[The statement follows:]

STATEMENT OF LILY MARY DAVID

I am Lily Mary David, consultant to the Advisory Committee on Federal Pay. I am testifying for Jerome M. Rosow, Chairman of the Committee, who had a prior commitment that he was unable to change. Mr. Rosow and the other two members of the Committee work for the Committee only a few days a year and are all employed full-time outside the public sector. He sends his apologies to you.

The Advisory Committee's statutory responsibility is to make recommendations with respect to annual increases in pay rates of approximately 1.4 million white-collar Federal employees. Changes in military pay are directly related to changes for these workers. Annual Federal civilian compensation costs are about $34 billion--inclusion of the military raises this to more than $60 billion. Each 1-percent increase in Federal white-collar civilian and military compensation costs about $600 million a year.

The Federal Pay Comparability Act of 1970 gave the Advisory Committee the duty of making independent recommendations to the President with respect to the annual comparability pay increase for Federal white-collar employees. The proposed pay reform legislation would extend the Committee's role to pay plus benefits for civilians. (Military benefits would not be affected, and one result of the proposed legislation would be to increase military pay at a different rate from civilian pay. Presumably military pay would increase at the rate that civilian pay plus benefits change.)

EXPANDED RESPONSIBILITIES

Recommendations of the President's Panel on Federal Compensation in December 1975 and an Executive Order signed on July 20, 1977 expanded the Committee's original responsibilities. It was charged with acting as a third party to improve the relationship in the pay decision process between the President's Pay Agent and organizations representing Federal employees and with making longer term policy recommendations regarding Federal pay determinations. I am attaching for your convenience a copy of that part of last year's statement that was submitted to you that describes these functions in slightly greater detail.

The Committee's mediation role between the Pay Agent and representatives of Federal employees remains in limbo since the members of the Federal Employees Pay Council have not yet returned after resigning to protest the 1978 decision to issue an alternative plan. Federal employee organizations have continued to meet with the Committee to express their views regarding the annual pay increase recommendations, and the employee representatives still seem to consider the Committee a bridge to the President and his Pay Agent with respect to white-collar pay.

ALTERNATIVE PLANS

This past year was the second in a row of alternative plans to reduce the annual pay increase below comparability. In its report to the President, the Committee, therefore, made not only its required recommendations as to the size and distribution of a full comparability increase but urged him to make the alternative plan more liberal than the increase put into effect in October 1978 or the increase projected in his Fiscal 1980 budget message. The Committee urged at least a 7-percent alternative plan increase instead of the 5.5 percent originally projected, and its members were pleased that the 7-percent option was adopted.

UPPER GRADE PAY LAG

All three Committee members were disappointed, however, that the increase was a uniform percentage adjustment for all grades except the two lowest, instead of varying among grades in proportion to comparability. They recommended varying the size of the increase because of the importance of allocating the large Federal payroll expenditures in such a way as to get top quality people and performance. To do this, pay rates should be geared as closely as possible to the private sector at all grades. Three successive uniform percentage increases have created a serious lag behind comparability in the upper grades of the Federal pay scale, whereas pay at the lower grades is either at or within 2 percent of comparability.

The gap at the upper end of the Federal salary scale is not corrected by the pay provisions of the Civil Service Reform Act. The Act does not change the steps of the salary scale for Grades 13 to 15; it simply changes the criteria by which workers attain various steps within their grade. Those in most of the pay steps of GS-15 receive approximately 8 percent less than their counterparts in the private sector, but those at the top of the pay scale in that grade lag even farther behind. These are the workers whose performance is judged to be the highest--they are in these steps because of merit pay. However, because of the Executive Level V pay ceiling, they are paid as much as about $2,000--10.6 percent--below comparability. If Congress does not raise the Executive Level V ceiling on General Schedule pay, the ceiling will prevent pay increases for more and more of the workers in these middle management grades and will have a greater restrictive effect on those whose above-average performance puts them in the upper part of the pay scale.

So far as the Senior Executive Service is concerned, the bonus provisions will provide some relief from the pay ceiling for up to half of the career members of this Service. Here too, to the extent that the absolute ceiling on pay plus bonuses does not keep pace with the increase in pay of General Schedule workers, the persistent problem of compression will erode incentives to accept more responsibility.

HISTORY OF FEDERAL PAY

The Committee has recently issued an 8-year history of the Federal Pay Comparability Act. This report has created a great deal of interest both for its evaluation of the existing pay comparability system and for its discussion of some of the pay reform proposals. At the request of Mrs. Spellman, Mr. Rosow testified on the report's findings before the House Compensation and Employee Benefits Subcommittee on November 15. I can summarize the conclusions of the report by saying that the Committee believes that the principle of pay comparability serves the public and Federal employees well. However, it has been jeopardized by frequent departures from comparability and needs to be constantly guarded and improved.

PAY REFORM PROPOSALS

The Committee agrees with the pay reform proposals that comparability should be extended to benefits but believes that the method of extending the comparability principle to the complicated benefit area should be fully tested before there is a final and specific commitment to a new benefit or compensation comparability system. The new system should be easy for Federal employees and the public to understand. The "black box" should be as small and as open as possible.

The Committee also believes that there is need for reform of blue-collar pay fixing, and endorses the legislative proposals to set pay of at least some white-collar workers on a locality basis. However, it believes that the system for setting locality pay should be as simple and streamlined as possible. Moreover, it questions whether the locality approach should be extended to middle and upper level management positions; such an extension would be contrary to the practice followed in the private sector.

APPROPRIATION REDUCTION

The appropriation request for the Committee for Fiscal 1981 is smaller than its current appropriation. Because the Committee has turned back a substantial part of its budget for Fiscal 1979 and earlier years, the Office of Management and Budget cut the budget about 18 percent--from $232,000 to $190,000. This cut will reduce the flexibility that the Committee has felt important to have in case it needs any special analyses or consultations in conjunction with the annual pay increase or the issues involved in pay reform proposals. The fact that pay reform will extend Committee responsibilities to Federal benefit as well as pay changes increases the likelihood of its needing more studies. As I have indicated, the Committee members are particularly concerned about how comparability will be extended to compensation and how the concept of locality pay determination will be developed. The Committee is now developing some research plans in the area of locality pay determination. Such studies are neither simple nor inexpensive.

Mr. Rosow is also concerned about our budget cut as an example of a disincentive to save Federal dollars and improve Federal efficiency. He recently wrote Office of Management and Budget Director James McIntyre regarding this, not as an appeal of the decision to reduce the budget but about the need to encourage, not discourage, economy. His letter pointed out that such budget reductions are a clear incentive to agencies to spend all the money that is appropriated rather than to economize. He does not believe that Federal agencies should be given a share of any budget savings they achieve, since this might lead to skimping on their clients' needs. Neither does he think, however, that they should be penalized for their efforts to improve efficiency and return money to the Treasury.

The Committee's budget is so small as to appear inadequate to the task at hand. Apparently, the Committee's sustained efforts to contain expenditures has produced its own reward--namely, an 18-percent budget cut.

The Committee's appropriation request covers its normal expenses: Salaries and benefits of three full-time employees--an economist, a staff assistant, and a secretary; reimbursement of a part-time economic consultant and a part-time mediator, who will serve as needed when the Pay Council is reconstituted; rent and operating expenses of the Committee's headquarters office; and salaries and travel expenses of the Committee members when they are engaged in Committee work. The Committee did not fill two of its positions in the past fiscal year for two reasons: (1) The Committee was waiting to see the substance of pay reform proposals. (2) The Committee only recently found a candidate for the economist position who it feels confident has the competence the Committee needs. With the budget reduction, once that position and a supporting clerk typist job are filled, the Committee will no longer have any significant contingency funds for any special analyses it may need in conjunction with the annual pay increase or to develop long-term policy recommendations.

STATEMENT FROM LAST YEAR'S TESTIMONY DESCRIBING FUNCTIONS OF THE ADVISORY COMMITTEE ON FEDERAL PAY

The Federal Pay Comparability Act of 1970 established our Committee. Under this legislation, the initial recommendation regarding the size of the annual pay increase is made by the Director of the Office of Management and Budget, the Director of the Office of Personnel Management, and the Secretary of Labor, who together are the Pay Agent, on the basis of private industry pay data from the Bureau of Labor Statistics. Our Committee reviews the Agent's recommendations and considers the views of employee representatives regarding the proposed increase. We then develop and submit our independent recommendations to the President.

Two additional responsibilities were given the Committee as a result of recommendations of the President's Panel on Federal Compensation in December 1975 and an Executive Order signed by President Carter on July 20, 1977. The first is a labor relations-mediation role. It was intended to improve the day-to-day and long-term relationships between the President's Agent and representatives of Federal employees and thus make possible a more satisfactory and smooth decision as to the annual white-collar pay increase. It provides that the Committee, or its mediator, participate on a year-round basis in meetings between the Pay Agent and the Federal Employees Pay Council, which represents major Federal employee white-collar unions, and that the Committee provide advisory rulings on issues referred to it by the two groups in advance of the annual pay decision. The second involves recommendations to the President regarding changes that should be proposed in Federal compensation policies and practices.

ORAL STATEMENT

Ms. DAVID. Thank you, Senator. I am testifying today for Jerome M. Rosow, who is chairman of the committee. Mr. Rosow sends his regrets, but he had a prior commitment which he was unable to change.

Both Mr. Rosow and the other two members of the committee work only a few days a year and are all employed full time outside the public sector.

The committee's statutory responsibility is to make recommendations with respect to annual comparability increases in pay of approximately 1.4 white-collar Federal employees. Changes in military pay are directly related to changes for these workers. Each 1 percent increase in Federal white-collar civilian and military compensation costs at least $600 million a year.

PAY DECISION RESPONSIBILITY

The final decision on the annual pay increase is made by the President, and it is based initially on recommendations of his pay agent, which consists of administration officials. These officials consult with representatives of employee organizations, but they are not bound by the recommendations of these organizations, and as you know there is no collective bargaining for white-collar employees.

The Advisory Committee is required to make independent recommendations to the President. It is designed really to provide an outside voice, that can give some consideration to longer term problems with respect to Federal pay policy and to the long-term labor relations problems involved in pay decisions.

EXPANSION OF DUTIES

The proposed pay reform legislation would extend the committee's role to benefits. The committee also is required by Executive order and by recommendations from the Rockefeller Panel in 1975 to involve itself in the dealings between the President's pay agent and Federal employee representatives as they discuss pay issues before the final annual decision is made. At present, the mediation role the committee was given is in limbo since the pay council, which represents employee organizations, is not functioning. These organizations walked off the pay council a couple of years ago, in protest of an alternative plan, and have not returned.

Although the committee's statutory responsibility is simply to advise the President on what a comparability increase would be, it has taken account of the President's plans to put into effect an alternative plan, in other words, a smaller increase than comparability would call for. Last year, for example, when it learned that an alternative plan was to be announced, it urged the President that he make it more liberal than he originally announced, and it was pleased that when the President made his final decision, he gave the 7 percent increase that the committee had endorsed instead of the 5.5 percent increase that had been projected originally in the budget.

IMPORTANCE OF NONUNIFORM INCREASES

The committee's members have been disappointed, however, that last year's increase, like the two that preceded, were uniform for all grades except the two lowest. The committee believes that it is important to allocate the largest Federal payroll expenditures in such a way as to get top quality people and performance. To do this, pay rates should be geared as closely as possible to the private sector in all grades. If it is not possible to put a full comparability increase into effect, at least the increase that is decided on should be proportional to comparability.

The recent civil service reform has not helped to reduce the gap that has developed at the upper end of the regular Federal salary scale, those at the top of the GS-15 pay scale. Middle management employees whose performance is judged to be the best are now receiving as much as 10.6 percent below comparability. One of the problems is the executive level ceiling on general schedule pay. If Congress does not raise that ceiling, it prevents pay increases for more and more workers in middle management grades as time goes on.

Neither do the bonus provisions of the Senior Executive Service really correct for compression. The bonus provisions do provide some relief, but again that relief is likely to become smaller and smaller as time passes.

APPROPRIATION REQUEST

The committee's appropriation request covers salaries and benefits for three full-time employees of the committee—an economist, a staff assistant, and a secretary. It also provides for funds for reimbursement of the part-time economic consultant and a part-time mediator who is employed when the pay council is in existence. It also provides funds for the committee's office space and expenses and salaries and travel of the committee members during the few days in which they work on committee business.

The committee has not had two of its positions filled during the past year because it was waiting to see the substance of pay reform proposals and because it has only recently found a candidate for the economist position who it feels has the skills the committee needs.

Because the committee has turned back a substantial part of its budget in earlier years, the Office of Management and Budget cut the budget request for fiscal 1981 about 18 percent, from $232,000 this year to $190,000 in fiscal 1981. With this budget reduction, the committee will no longer have any significant contingency funds for any special analyses it may need to make in conjunction with the annual pay increases or to develop long-term policy recommendations. The fact that pay reform will extend the committee's responsibilities to Federal benefits as well as pay increases adds to the likelihood of its needing more studies. The committee members are particularly concerned about how comparability will be extended to benefits and how the concept of locality pay will be developed.

I think that essentially covers the highlights. I would be glad to try to answer questions.

Senator DECONCINI. Thank you very much. That is a fine statement. We do have a few questions we will submit for the agency to answer. Thank you.

Ms. DAVID. Thank you. We will be pleased to answer any additional questions.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

ACTIVITIES OF THE ADVISORY COMMITTEE

Question: The Advisory Committee's responsibility is to review the recommendations of the President's Pay Agent and consider the views of employee representatives regarding the proposed comparability pay increases and recommend to the President what comparability pay adjustment should be made. With regard to the October 1979 comparability pay raise, what was the recommendation of the President's Pay Agent?

Answer: The October 1979 comparability recommendation of the President's Pay Agent was for an increase averaging 10.4 percent and varying from 8.8 percent in Grade 6 to 15.4 percent in Grade 15 (23.6 percent in Grade 18).

Question: What was the recommendation of the Federal Employees Pay Council?

Answer: The Federal Employees Pay Council recommended a uniform 10.4 percent increase for all grades.

Question: What was the final recommendation of the Advisory Committee on Federal Pay?

Answer: The Advisory Committee made the same comparability increase recommendation as the Pay Agent--that is, an increase varying from 8.8 percent at Grade 6 to 15.4 percent at Grade 15 (23.6 percent at Grade 18) and averaging 10.4 percent. It also took cognizance of the fact that the President planned to issue an alternative plan and proposed (a) that this average 7 percent rather than the 5.5 percent projected earlier in the President's budget proposal, and (b) that the alternative plan should not provide a uniform percentage increase for all grades. It proposed a minimum pay increase of 6.5 percent for Grades 1 through 12, with larger increases at Grades 13 and above so as to keep the comparability pay lag for any pay grade to 4.5 percent or less. This would have increased average payroll costs by 7.05 percent.

Question: In view of the fact that the Administration has rejected the advice of its Pay Agent and the Advisory Committee the last several years, is it useful to continue the activities of this Committee?

Answer: It is useful to continue the Committee for the following reasons:

The usefulness of the Committee cannot be measured by the number of times the President has adopted the comparability pay increase recommended by the Committee but by its impact on long-term compensation policies and costs.

The statute establishing the Committee (Public Law 91-656, Section 5306) set up the Committee as an independent establishment, to be composed of public members generally recognized for their impartiality, knowledge and experience in the field of labor relations and pay policy. It was designed to assist the President in carrying out the policy of pay comparability and to act as a bridge between the Administration and Federal employee organizations in the absence of collective bargaining.

Assistance in carrying out pay comparability policy, especially as amplified by recommendations of the Rockefeller Panel on Federal Compensation and Executive Order 12004, issued in 1977, includes advice to the President on long-term Federal pay policies, as well as mediation and other efforts to improve Federal white-collar labor relations and the pay setting process.

-- So far as labor relations and the pay setting process are concerned, Executive Order 12004 charges the Advisory Committee with providing advisory opinions on issues on which the President's Pay Agent and Federal employee organizations cannot agree in order to facilitate the pay decision process. (Earlier, employee organizations and the Administration had proposed giving the Committee powers of binding arbitration but the Justice Department ruled this was not permissible.) Even during periods of breakdown of discussions between the Pay Agent and the Federal Employees Pay Council, the Committee remains as a bridge between the parties.

-- In its advice to both the President and the Pay Agent, the Committee has emphasized labor relations aspects of pay comparability decisions and has been successful in encouraging greater attention to these considerations. For example, as a result of the Committee's offices, the Pay Agent has phased in or otherwise delayed the tightening up of pay comparability measurements. In our view, good long-term labor relations are essential to employee performance and containment of Federal employee payroll costs; we are dealing with compensation costs of $60 billion a year. Disillusionment on the part of Federal employees with the pay comparability system could increase employee militancy and efforts to scrap the system. As the Committee has pointed out in discussions with the President as well as in print, alternatives to comparability are extremely costly. If Federal white-collar and military pay scales had risen by the same percent from 1970 to October 1979 as the collectively bargained Postal scales, military and white-collar compensation bills would be about $20 billion a year higher than they are.

-- The Advisory Committee has had a significant impact on long-term changes in pay. It has supported a number of efforts by the Pay Agent to tighten up on the measurement of pay comparability. It was at the Committee's urging that the Pay Agent in 1973 decided to revise the method used since the inception of pay comparability to link Federal and private sector pay. The resulting revision has held annual civilian and military payroll costs about $1.5 billion below what they would have been.

-- The Committee has played a major consultative role in pay reform proposals. At its recommendation, the Administration decided to propose that control of retirement benefits be left with the Congress instead of being transferred to the President.

The desirability of continuing the Committee and its strengths are attested to by proposals in the Administration's and GAO's pay reform proposals to add to the duties of the Committee.

Question: How many times did the members of the Committee meet in order to formulate their recommendations on the October 1979 comparability pay adjustment?

Answer: The Committee does not function primarily by formal meetings. Rather, its business is conducted primarily by its Chairman, who is in the Washington office on an average of once a month, by frequent correspondence and telephone calls among its members, by work of individual members, and by occasional informal meetings of two of the members. The Committee has, in a number of recent years, met with the President to discuss Federal pay and meets informally or communicates by memo or telephone with Administration officials on policy issues.

Members of the Committee participate actively in planning the work and Committee reports. For example, they took an active role in preparation of the attached 8-year history of Federal white-collar pay comparability, which has served to clarify the record of pay comparability and has helped to set the record straight as to the strengths of the pay comparability system.

The Chairman occasionally testifies before Congressional Committees on issues affecting Federal white-collar pay, including pay of executives, legislators, and judges. His most recent testimony was before the Compensation and Employee Benefits Subcommittee of the House Post Office and Civil Service Committee on November 15, 1979.

Question: What do the permanent staff of the Committee do during the 11 months of the year when the members are relatively inactive?

Answer: As already indicated, the Committee's functions are not limited to a single month in the year. The Committee members, however, all have full-time jobs and are not regularly in Washington; hence, they rely on the staff and part-time consultants to minimize the time they spend on Committee business and to perform their functions efficiently. This staff supplies the Committee members with the analyses and information they need to advise on Federal compensation policy, keeping the members continuously informed on developments affecting Federal and private sector pay, Civil Service and pay reform, and other legislative and administrative developments that may influence Federal pay and benefits. It, of course, handles the day-to-day correspondence and inquiries regarding Federal compensation. It processes special reports such as the 8-year history of white-collar pay comparability, which involved roughly six months of part-time consultant and staff time. When the Committee is fully staffed, the staff also conducts research on issues dealing with Federal and private sector pay.

When the Federal Employees Pay Council is in existence, coverage of the more or less regular meetings throughout the year of the Pay Council and Pay Agent, in which the Advisory Committee or its mediator must participate, is time consuming.

Question: Why couldn't the staff support services required by the Advisory Committee be provided to it by OPM?

Answer: Assignment of the services now provided by GSA to the Office of Personnel Management would presumably save no money.

OPM performance of all staff help required by the Committee would compromise the independence of the Committee and raise questions about confidentiality of its deliberations and material needed for consideration of pay policy issues. When the Committee raises questions about pay or pay reform proposals made by the Office of Personnel Management, it would be unrealistic to expect staff of that agency to provide assistance that was significantly at variance from OPM policy recommendations. The issue is not support services but any tie of the Advisory Committee, which was established to be impartial and independent, with the OPM, which is a party of interest and whose Director is part of the Pay Agent. Any tie would make the Committee's independence suspect so far as representatives of Federal employee organizations are concerned; these organizations now trust the Committee but have always been deeply suspicious of the role of the Office of Personnel Management and of the Office of Management and Budget in the pay decision process.

Question: How much of the total request is to fund the salaries and necessary support services for the staff?

Answer: Following is a breakdown of the estimated resources for salaries and necessary support services for the staff:

-- Permanent positions—Economist, staff assistant, and secretary-statistical clerk	$81,000
-- Travel	1,000
-- Standard level user charge (rent)	10,000
— Communications, utilities (Committee and staff)	4,000
-- This does not include $3,000 for printing and reproduction and $12,000 for GSA support services for the entire Committee operation.	

Question: How much is requested to provide the Committee members with financial support?

Answer: We have budgeted $25,000 for compensation, travel, and space rental for the three members of the Committee for Fiscal 1981. They are paid at a daily rate and frequently bill the Committee for only part of a day.

Question: What is the explanation of the $40,000 decrease in the 1981 budget proposal?

Answer: The Committee had originally requested the same budget in Fiscal 1981 as in Fiscal 1980. The $40,000 decrease in the 1981 budget proposal was ordered by the Office of Management and Budget. Essentially the reason for the cut, aside from the Administration's general effort to reduce appropriations, was the fact that the Committee has historically returned a substantial part of its budget, unspent. It has consistently attempted to keep its expenditures to a minimum but has always requested and been given a substantial cushion so that if it needed special studies or expert advice on issues with respect to Federal pay it would be able to pay for such studies or advice. It also did not spend the amount earmarked for an economist and statistical clerk during Fiscal 1979 because it was waiting (a) to find out the shape of proposed pay reform legislation, and (b) to find a person who would meet the requirements of a small agency--someone with the versatility and varied backgorund that work at a responsible level in such an agency requires.

FURNITURE

Question: How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget?

Answer: There is no money in either the 1980 or 1981 budgets for purchase of furniture. There is $2,000 designed to purchase such items as possibly a new typewriter or a new copier, should either be necessary.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

STATEMENT OF CLYDE C. COOK, CHAIRMAN, COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

ACCOMPANIED BY CHARLES W. FLETCHER, EXECUTIVE DIRECTOR

PREPARED STATEMENT

Senator DECONCINI. The committee will now receive testimony from the Committee for Purchase from the Blind and Other Severely Handicapped regarding the fiscal 1981 budget request and the fiscal 1980 supplemental. For fiscal 1981, $516,000 and 12 permanent positions have been requested, and $9,000 have been requested for the 1980 supplemental.

The committee is pleased to have Clyde Cook, the committee chairman, with us today to present this testimony.

Mr. Cook, your full statement will be printed in the record, without objection. We would be pleased to hear a summary.

[The statement follows:]

STATEMENT OF CLYDE C. COOK

Mr. Chairman, we are pleased to appear here today to present the appropriations request of the Committee for Purchase from the Blind and Other Severely Handicapped for fiscal year 1981. With me today is Mr. Charles W. Flethcer, the Executive Director of the Committee.

This committee was created by the Javits-Wagner-O'Day Act (Public Law 92-28) in 1971. The committee is the successor to the Committee on Purchases of Blind-Made Products established by the Wagner-O'Day Act of 1938. Its purpose is to increase employment opportunitites for blind and other severely handicapped, and whenever possible, to prepare these individuals to engage in normal competitive employment. The committee's primary means for achieving its objective is to direct the Government's procurement of selected commodities and services to qualified workshops serving the blind and other severely handicapped.

The 15 members on the committee are appointed by the President. Eleven members represent various Government agencies and four are private citizens who are conversant with the problems in employing the blind and other severely handicapped.

Under the act, the committee has the responsibility for determining which products and services are suitable for provision to the Government by qualified workshops serving the blind and other severely handicapped, and for establishing the price which the Government will pay for those commodities and services.

During the past year, the committee has continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped individuals.

Workshop sales to the Federal Government under the committee's program during fiscal year 1979 were $84 million. In addition, sales through the military resale program were about $8 million for a total of over $92 million under this program.

Blind workshop sales, including those through the military resale program, increased from $68 million in fiscal year 1978 to $71 million in the past year.

Government sales by other severely handicapped workshops under this program were $21 million, an increase of $4.4 million over fiscal year 1978.

During the past year, the committee approved the addition of 39 commodities and 16 services to the procurement list with a value of $9.7 million. These additions created new jobs for over 390 blind and handicapped individuals. Within these totals, the committee added 21 commodities for blind workshops with an estimated value of $5.9 million. The additions approved for the other severely handicapped were 18 commodities and 16 services, valued at $3.8 million.

By the end of fiscal year 1979, other severely handicapped workshops had qualified 109 groups of commodities and 114 services for the procurement list. These represent an annual sales value of over $25 million and employment of more than 2,100 severely handicapped individuals.

There have been only slight changes in the number of blind workshops that have indicated an interest in qualifying to participate in the program during the past several years. On the other hand, workshops representing the other severely handicapped have continued to indicate considerable interest.

By the end of fiscal year 1979, the committee had authorized 66 blind and 108 other severely handicapped workshops to provide one or more commodities and services on the procurement list. This represents a decrease of one blind workshop and an increase of 14 other severely handicapped workshops from the total at the end of fiscal year 1978.

Our appropriations request for fiscal year 1981 is for $516,000. This request is $35,000 above the approved fiscal year 1980 budget and is required to meet normal increases in personnel costs and other operating expenses. This increase is made up as follows:

We have requested a $14,000 supplemental in the fiscal year 1980 budget to cover part of the civilian pay raises which went into effect on October 1, 1979.

Another $13,000 increase in pay and personnel benefits is due to the application of the 1979 pay raise in fiscal year 1981, together with the normal step increases.

The increase of $10,000 for the rent for office space (SLUC) is due to an increase in the rate per square foot scheduled in fiscal year 1981.

The requests for printing and reproduction and for supplies and materials have each been reduced by $1,000.

We have reviewed our budget requests and consider that they are the very minimum the committee requires to discharge its responsibilities for expanding employment opportunities for our Nation's blind and other severely handicapped.

SUMMARY OF REQUEST

Mr. Cook. Thank you, Mr. Chairman.

With me today is Mr. Charles W. Fletcher, who is the executive director of the committee.

During the past year, this committee has continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped individuals. Workshop sales to the Federal Government under the committee's program during fiscal year 1979 were $84 million. In addition, sales through the military resale program were about $8 million, for a total of over $92 million under this program. This is an increase in the value of sales of $7.5 million for 1979.

As you indicated, our appropriation request for 1981 is $516,000. This request is $35,000 above the approved fiscal year 1980 budget and is required to meet normal increases in personnel costs and other operating expenses. The increase is made up of three entries.

We have requested a $14,000 supplemental in the fiscal year 1980 budget to cover part of the civilian pay raises which went into effect on October 1, 1979. Another $13,000 increase in pay and personnel benefits is due to the application of the 1979 pay raise in fiscal year 1981, together with the normal step increases. Another increase of $10,000 was for the rent of office space, the so-called SLUC fund established by the General Services Administration, and was due to an increase in the rate per square foot to be charged in fiscal 1981.

Each of the requests for printing and reproduction and for supplies and materials has been reduced by $1,000.

Mr. Chairman, as a result of the committee's program, thousands of blind and other severely handicapped individuals are now gaining full employment. With the training and experience they are obtaining, many of them already have and others will be able to become fully productive members of the Nation's work force. We will continue during 1981 our best efforts to increase the employment opportunities for these blind and other severely handicapped persons. There are a number of obstacles we see before us, but we will persevere.

Senator DECONCINI. Thank you very much, Mr. Cook. I am very impressed with the work you do in this area, and I am also impressed you are not asking for a large increase at all for any expansion. I compliment you for the success you have had and urge you to keep up that fine work. We have a few questions that I will submit to you and your director can answer them and return them to the committee. Thank you.

Mr. COOK. Thank you. We will be pleased to answer any additional questions.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

PROJECTION FOR FISCAL YEAR 1981

Question. Last year we were told that there were 171 certified workshops in the program and that estimated procurement by the Federal Government from these workshops would total $105,000,000 in fiscal year 1980. What are the projections for fiscal year 1981 with regard to the number of certified workshops and the dollar value of Federal procurement expected in fiscal year 1981?

Answer. We expect that 215 workshops will be authorized to produce commodities or provide services for the Government by the end of fiscal year 1981. The value of sales to the Government under the Committee's program in fiscal year 1981 should be about $115,000,000.

WORKSHOP PRODUCTION PROBLEMS

Question. The justification material indicated that there are increasing numbers of workshops encountering production problems and that this requires the Committee staff to devote a significant portion of its time to resolving these production problems. What responsibility and capability does the Committee have for helping workshops to resolve production problems?

Answer. The primary responsibility for assisting workshops in resolving production problems rests with the central nonprofit agency. The Committee staff assists in those cases when its superior knowledge and expertise is required. The following persons on the staff are directly concerned with these problems: deputy executive director, senior industrial engineer, management analyst, and contract administrator.

WAGES OF WORKSHOP EMPLOYEES

Question. Last year 60 Minutes ran a story on the wages paid to employees of these sheltered workshops which are considerably below minimum wages. What is the average salary paid in the workshops certified by the agency?

Answer. The 60 Minutes program addressed conditions in workshops for the blind. In fiscal year 1979 the average wages paid to blind workers in the workshops participating in the Committee's program was $3.14 per hour.

Question. What is the minimum wage for the type of work performed in these workshops?

Answer. Normally, the minimum wage paid is at least 25% of the Federal minimum wage.

Question. What position has the agency taken with regard to wages for workshop employees?

Answer. The Committee's position regarding wages paid blind and other severely handicapped employees in workshops is that they must be paid wages commensurate with those paid nonhandicapped workers in industry in the local area for essentially the same type, quality and quantity of work. Any workshop employee who is paid less than the minimum wage must be covered by the appropriate Department of Labor certificate.

FURNITURE

Question. How much is included in the 1981 budget proposal for the purchase of furniture? How much is in the 1980 budget?

Answer. No funds for the purchase of furniture are included in the Committee's 1980 or 1981 budgets.

1980 SUPPLEMENTAL REQUEST

Question. The Committee has requested $14,000 in fiscal year 1980 for the October pay raise. What portion of the total pay raise cost is being absorbed in fiscal year 1980?

Answer. The Committee is absorbing 40% of the October 1979 pay raise in fiscal year 1980.

Question. Why can't the entire impact of the pay increase for fiscal year 1980 and 1981 be absorbed within the base?

Answer. About 90% of the Committee's budget is related to pay, personnel benefits, or reimbursement to other agencies which we do not control. The remaining 10% covers such items as travel, supplies, and equipment. The pay increase represents about one-half of the funds requested in those latter classifications. Reducing those classifications, which have already been cut-to-the-bone, would so curtail the Committee's operations as to make it totally ineffective. The Committee was able to absorb a portion of the pay raise in the fiscal year 1980 budget due to the fact that it was unable to fill one staff position during the early part of fiscal year 1980.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

STATEMENT OF STEPHEN L. BABCOCK, EXECUTIVE DIRECTOR, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACCOMPANIED BY:

RICHARD K. BERG, EXECUTIVE SECRETARY
JAMES V. DeLONG, RESEARCH DIRECTOR

PREPARED STATEMENT

Senator DECONCINI. The committee will now receive testimony from the Administrative Conference of the United States regarding the fiscal year 1981 budget request and the fiscal year 1980 supplemental request. For fiscal 1981 $1,119,000 and 20 permanent positions have been requested and $48,000 and no additional permanent positions have been requested for fiscal 1980.

The committee is pleased to have Stephen Babcock, Executive Director of the Administrative Conference, with us to present the testimony on these requests.

Mr. Babcock, your full statement, without objection, will appear in the record at this point. If you would summarize that for us, we would appreciate it.

[The statement follows:]

STATEMENT OF STEPHEN BABCOCK

My name is Stephen Babcock, and I am the Executive Director of the Administrative Conference. I have also, since last November, been acting as Chief of Staff in the absence of a full-time Chairman. I am accompanied today by our Executive Secretary, Richard Berg, and our Research Director, James DeLong.

I am glad to have this opportunity to appear before you in support of our fiscal 1981 budget request. I would like, first, to summarize the activities of the Conference in the past 12 months, and then to tell you of the Conference's plans for fiscal 1981. I would also like to take this opportunity to advise you of the current status of the various regulatory reform bills that may affect the Conference.

The Administrative Conference's appropriation request for fiscal 1981 is for $1,119,000. We also are requesting a fiscal 1980 pay raise supplemental appropriation of $48,000. If our supplemental and our fiscal 1981 requests are granted, our total funding level for fiscal 1980 will be $1,127,000, and the total of our funds for 1981 will be $8,000 less than the current year's level. This request for fiscal 1981 is $13,000 less than the request we presented to our House Appropriations Subcommittee in February, since our request now reflects a downward revision made in March as a result of the President's decision to balance the fiscal 1981 budget.

Mr. Chairman, I am pleased to report what I think are a number of worthwhile accomplishments on the part of the Conference in the year's time since we last presented our budget request.

RECENT CONFERENCE RECOMMENDATIONS

First, the Conference has virtually completed the most time-consuming and expensive project it has ever undertaken: its statutorily-mandated report to the Congress on the hybrid rulemaking procedures established in the Magnuson-Moss Act for the use of the Federal Trade Commission in its trade regulation rulemakings. The first phase of our four-year effort was completed in June of 1979, when we transmitted Recommendation 79-1 to the Congress. This recommendation suggests a number of ways in which the Conference believes that the FTC can improve its own procedures to implement that Act—methods by which the FTC can foster better rulemaking by increasing the degree to which the parties to these proceedings focus, at earlier stages, on the key issues to be determined.

At its second Plenary Session for the year, held in December of 1979, the Conference adopted an additional recommendation resulting from its FTC study. This one concerned the Federal Trade Commission's administration of its public participation program established by the Magnuson-Moss Act. The recommendation is addressed both to Congress and to agencies generally, and is, in effect, a guide for establishing an effective program of this type. It does not, however, address the question of the overall benefits of public participation reimbursement programs.

At the June 1979 Plenary Session, the Conference also suggested improvements in the methods of establishing State-Federal agreements on the administration of the Supplemental Security Income Program and for resolving disputes arising under those agreements. This recommendation is of great interest to the 27 States that are parties to individual agreements providing for federal administration of their programs. The third recommendation adopted at that Plenary Session calls on agencies to establish and make public their standards and practices for assessing penalties—including the amounts of the penalties that they customarily seek—under statutes providing for civil money penalties, for mitigating penalty assessments, and for conducting administrative proceedings to find the facts on which a penalty assessment may depend. The changes in agency practice that this recommendation calls for represent a marked departure from that existing in most agencies, and the pace of agency implementation, I predict, will therefore be slow. Our experience, however, indicates that the recommendation will come to be adopted by most agencies, and we believe that it will markedly improve their enforcement efforts. Finally, the June Plenary Session produced a recommendation seeking to make cost-benefit analyses a more useful part of the regulatory process, by calling on agencies to publish their procedures and assumptions when using them. A more thorough analysis of the costs and benefits of proposed regulatory schemes is a key element in the regulatory reform movement, and I believe that this recommendation will contribute to that end.

The second recommendation adopted at the December Plenary Session concerns the so-called "Bumpers Amendment," which would change the standard for judicial review of agency action. The Conference is of the opinion that this amendment, in its form at the time this recommendation was adopted, could have unfortunate and unpredictable effects, and we recommended to the Congress that it not be adopted. The final recommendation adopted by the Conference at this Plenary Session was also addressed to the Congress. It recommends amendments to the post-employment restrictions on participation by former government employees established in the Ethics in Government Act of 1978, and reflects the concern of Conference members that unduly restrictive rules will interfere unnecessarily with efforts to recruit qualified persons for government service.

In addition to these three recommendations, the Conference adopted at its Plenary Session in December a resolution expressing its concern with Congressional termination of particular pending rulemaking proceedings at the Federal Trade Commission, and another resolution setting forth its views on the appropriate role of the Conference, adopted in view of the various regulatory reform proposals now pending before the Congress.

UPCOMING RECOMMENDATIONS

At the present time, Committees of the Conference are preparing proposed recommendations in four areas for action at the upcoming Plenary Session, scheduled for June 5th and 6th. The first is a review of government experience under the Federal Advisory Committee Act, and the second will be the concluding part of our extended study of the Magnuson-Moss procedures at the Federal Trade Commission. The June Plenary Session will also consider the results of a meeting of a Special Committee of the Conference, which was held earlier in April, concerning two internal matters of importance to the Conference: ways to improve our methods of selection of projects, and ways to improve our implementation efforts. This Special Committee was formed last summer, and has already produced the resolution on the future role of the Conference that was adopted at our last Plenary Session, and an amendment to our Bylaws designed to encourage better participation by our members.

During fiscal year 1981 we will continue our work on a number of existing projects, and will commission a number of new ones of the same small size. We do not anticipate commencing another large project involving substantial amounts of data collection, like our existing project on the Magnuson-Moss Act; nor are we requesting sufficient funds to do so. We plan to spend about 60 percent of our resources, or $671,000, on research and the development of recommendations during the coming fiscal year.

ADVISORY ACTIVITIES

The second major area of our work is that classified as "advisory and consultative." This work consists of responding to requests for written comments, of testimony, and of participating in meetings on particular administrative law and procedural questions. During the past twelve months, the staff of the Chairman's office has expended a large proportion of its efforts in this area. We have testified on four occasions—before the Senate Governmental Affairs Committee, the Senate Judiciary Committee's Subcommittee on Administrative Practice and Procedure, the House Post Office and Civil Service Committee, and the House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations—on various of the regulatory reform bills being considered by the Congress. We have testified before the Senate Commerce Committee's Subcommittee on Consumer on our Magnuson-Moss rulemaking study; before the Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery on S. 1654, the proposed Customs Court Act of 1979, and before the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary on this same subject. We also have prepared more than 20 letters of comment on procedural aspects of pending legislation at the request of Congressional staff and OMB personnel, and have participated in a number of meetings with the purpose of rendering informal advice to Congressional and agency staff.

We expect these efforts to continue during the remaining portion of this fiscal year and through fiscal 1981; and we believe the fact that Congressional and OMB staff continue to request the views of the Conference on pending legislation is, in itself, evidence that our efforts do in fact make the contribution to the legislative process envisioned by the drafters of the Administrative Conference Act. We expect to expend 15 percent of our resources, or $168,000, in this area in fiscal 1981.

IMPLEMENTATION ACTIVITIES

The third major area of Conference activity lies in its implementation efforts. Despite our stringent budgetary limitations, we have made good progress in this area in the past 12 months. At the beginning of the period, a new staff attorney was given the task of working on implementation of Conference recommendations as his primary responsibility. While the need to devote continuing attention to our implementation efforts has been recognized since the inception of the Conference, we had not, until November 1978, had a staff attorney specifically assigned to this job on a sustained basis. We had, in 1977, undertaken a special study of the implementation by independent agencies of recommendations adopted to that date. Our new attorney has developed and organized detailed implementation information regarding independent agencies and executive departments for the recommendations adopted since that date, and has sought additional information from many agencies whose earlier responses were inadequate.

Beyond this, our staff attorney initiates reminders to agencies of the existence of past recommendations in light of legislative and regulatory developments, and responds to agency requests for aid in implementing recommendations. For instance, he has consulted with several agencies to improve their policies on grant administration and adverse agency publicity, and is presently working with administrative law judges to ensure that agency hearings are held in appropriate facilities. Seizing the occasion of the effective date of P.L. 95-224, the Federal Grant and Cooperative Agreement Act, we wrote to remind Federal grantor agencies of the practices recommended in three previous recommendations on grant administration. Several of these practices have since been recommended by OMB's report to Congress on federal assistance programs, or in the working papers on which that report is based. Additionally, we have provided comments to agencies, including some that have not specifically sought the Conference's views, on procedural aspects of proposed rules. Comments have involved such matters as rulemaking and adjudicative procedures, assessment and mitigation of civil penalties, time limits, and grant administration procedures. These and similar initiatives are intended to ensure Conference recommendations a hearing in circumstances where options for significant procedural reform are being considered, and thereby to increase the quality and effectiveness of agency implementation.

We have also commissioned a study, which should be completed by the end of this fiscal year, to evaluate the impact of a prior Conference recommendation calling for agencies to utilize summary decision procedures to avoid unnecessary trial-type hearings (Recommendation 70-3). This study, which will compare various agencies' experiences prior and subsequent to their institution of such procedures, should provide a basis for assessing the relative costs and benefits of agency implementation of the recommendation and thus for evaluating its overall utility. The study should also give us information on practical factors affecting agency compliance that could prove useful in the implementation of other Conference recommendations.

LEGISLATION IMPLEMENTING CONFERENCE RECOMMENDATIONS

Several pieces of legislation recently enacted by Congress have served to carry out Conference recommendations, and good prospects exist for the future. In late 1978, enactment of the Customs Reform and Procedural Simplification Act effectuated those parts of Recommendation 77-2 calling for a fairer approach to imposing penalties for tariff violations. The recent Trade Agreement Act of 1979 implemented other parts of that recommendation, and the pending Customs Court Act of 1980 would go far toward carrying out the remainder of Recommendation 77-2. Congress has chosen to follow the civil penalties approach suggested in Recommendation 72-6 in recent laws affecting the Federal Maritime Commission, the Federal Reserve System, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. Moreover, the major regulatory reform bills presently being considered would implement large parts of several Conference recommendations, including those on time limits for agency action (78-3), selection of administrative law judges (69-9), public participation (71-6), agency subpoena power (74-1), delegation of final decisional authority (68-6), and the elimination of certain exemptions from APA rulemaking requirements (69-8).

INCREASING IMPLEMENTATION EFFORTS

Effective implementation efforts, we believe, will require the expenditure of resources of some magnitude; and our targeted amount for this activity in fiscal 1981 is \$168,000—15 percent of our resources. We are, however, currently considering how to increase our efforts in this area, because some of us do not believe that we now are doing enough. The Special Committee that was set up as a result of Conference action at the Plenary Session in June 1979 has recently considered this question, and has prepared recommendations for consideration by the Chairman and Council. The "pilot" study of the impact of Recommendation 70-3 may also yield information that will be of significant benefit. Lastly, we have initiated contact with the Office of Management and Budget to solicit their views on the recent recommendation of the General Accounting Office that OMB should oversee the collection of implementation information for us from Executive branch departments and other establishments. The problem with the obvious ways to increase our implementation efforts is that they would require the expenditure of such a large portion of our funds that we would have virtually nothing left for research leading to the development of new recommendations. We are considering this area very carefully, however, and hope to have our ideas in order so as to be able to present them to our new Chairman when he or she is appointed.

EDUCATIONAL AND STATISTICAL ACTIVITIES

The fourth area of our expenditures is in educatinal and statistical activities. During the past twelve months we have been working to bring out a new report on our Uniform Caseload Accounting System. This is a compilation of government-wide statistics on agency adjudication activity that includes elapsed time and time-and-effort statistics on all of the cases handled by administrative law judges in the 29 agencies that make regular use of them. Our first report, which included data for fiscal year 1975, was well received by those who are concerned with ALJ utilization and management. The report that we are now preparing will include an expanded array of statistics for fiscal years 1976, 1977 and 1978. We hope to be able to go to press with our new report in June, if not sooner. We will then determine, based on how useful the new data is perceived to be, whether to commence work on a report covering 1979 and 1980. We have budgeted 5 percent of our resources, or \$56,000, for this activity in fiscal 1981.

CLEARINGHOUSE ACTIVITIES

The final area of our work consists of our clearinghouse activities, again budgeted at 5 percent of our appropriation. The best example of what we have done in the recent past in this area is our Regulatory Reform Forum, which brought together key people involved in regulatory reform, from throughout the government, for mutually-beneficial discussions of current issues. It met three times during the past winter, and conferees heard the Director of the President's Regulatory Council, Peter Petkas, describe the most recent regulatory calendar, and Assistant EPA Administrator William Drayton discuss that agency's evolving policy for emissions control (the "Bubble Concept"). The participants included representatives of OMB, the President's Domestic Policy Staff, and representatives of private groups interested in regulatoy reform issues.

REGULATORY REFORM LEGISLATION

The activities of the Conference that I have described, and those we propose to engage in during fiscal 1981, assume that our statutory mandate will remain unchanged. Actually, as you know, it is possible that the Congress soon will enact legislation that will increase our duties and responsibilities. The Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary has recently completed its mark-up of H.R. 3263, the Administration Bill, which would give the Conference the responsibility to review agency activities under a government-wide public participation reimbursement program. On the Senate side, the Governmental Affairs Committee has completed its efforts on the Ribicoff Bill, S. 262. This bill would give to the Conference the responsibility to evaluate administrative law judges—who would be given terms of ten years—and to distribute public intervenor funds to applicants. It would abolish the membership element of the Conference—a feature of the bill which we have opposed—and would replace the Chairman with an Administrator and Deputy Administrator.

The newest bill under consideration is S. 2147, the Culver-Laxalt Bill, which has replaced the Kennedy Bill, S. 1291, before the Senate Judiciary Committee. S. 2147 transfers the entirety of the administrative law judge function to the Conference, but does not limit ALJ appointments to a term of years. The bill also gives the Chairman of the Conference a seat on the nine-member Regulatory Policy Board that it creates, and directs the Conference to develop model rules of procedure for all agencies to use. Our most recent information is that the full Committee expects to consider this bill, in conjunction with S. 262, on April 29, 1980.

This budget request does not reflect any of the new functions that may be assigned to the Conference, and we will have to seek additional funds, in the form of a supplemental request for fiscal 1981, if any of these bills become law.

As you know, Mr. Chairman, the Administrative Conference is now waiting for the nomination and confirmation of a new Chairman, and we expect word from the White House on this subject very soon. Our new Chairman will undoubtedly have a new slant on resource-allocation decisions for fiscal year 1981, and we cannot anticipate his or her views. In the meantime, we are continuing the Conference on its past course, and are avoiding any long-term commitments of significant proportions of our resources, so as to maximize our new head's flexibility. We on the staff are continuing our efforts to support the work of the Conference members, and believe that our new Chairman will find an organization that is able and willing to advance the fairness and efficiency of the administrative process, as we have in past years. I thank you for your consideration of our appropriation request for fiscal 1981. We will be happy to respond to any questions you may have.

MARCH BUDGET CUTS REFLECTED

Mr. BABCOCK. Thank you, Senator.

With me today, to my right, is James DeLong, our research director, and, to my left, is Richard Berg, our executive secretary.

Senator DECONCINI. Welcome.

Mr. BABCOCK. Our request is a very lean one and it already reflect the March budget cuts requested by the President. We need the entirety of it to continue our work. And I note that for 1981 it is $8,000 less than the 1980 appropriations plus our pending supplemental. So it is indeed a lean request.

UPDATE OF PREPARED STATEMENT

My prepared statement mentions regulatory reform legislation. Since I submitted the statement, a few things have happened. The House Subcommittee on Administrative Law and Governmental Relations, under Congressman Danielson, has completed its work on the administration's bill, H.R. 3263, and has transmitted it to the full Judiciary Committee. They will commence markup very soon. The portion of the administration's bill concerning administrative law judges—as you may know, there is considerable controversy over whether or not they should be given terms and whether a system of appraising them should be set up and given to this agency—that portion is pending before the House Post Office and Civil Service Committee, and Chairman Hanley heard our testimony on that last week. Hearings are continuing.

The Senate Judiciary Committee did not, as my prepared statement indicates, commence marking up S. 242 and S. 2147, but they will do so soon.

The point of this, for appropriations purposes, is that all the pending regulatory reform bills will give additional tasks to the Administrative Conference, of one kind or another, and we will undoubtedly be back before this committee with a supplemental if any of them are enacted.

The statement also describes the present work of the Administrative Conference. Specifically, we talked about what is going to happen at the upcoming June Plenary Session. In addition to the recommendations mentioned in the prepared statement, we may now have a recommendation on the procedures used to administer the Emergency Petroleum Act, the so-called remedial order procedures. That is a very hotly contested issue, as you may imagine. The oil companies and other members of the public are very interested in it, and our committee will be considering that subject again next Monday, May 5.

We also have a recommendation in the works on disqualification of decisional officials in informal and hybrid rulemaking.

Those two issues we will be considering at the June Plenary Session, in addition to those mentioned in the prepared statement.

I think that concludes a sufficient synopsis of the prepared statement. If you have questions, I would be glad to answer them.

CONTRIBUTIONS FOR RESEARCH

Senator DECONCINI. Mr. Babcock, in a recent GAO report it was suggested that the Administrative Conference should seek contributions from other agencies for research efforts. What is the reaction of the Administrative Conference to this proposal?

Mr. BABCOCK. We think that is a fine idea, and we have discussed that subject in our response to the report. A special committee had already been formed to consider a number of subjects concerning Conference management. Our council has considered its report. As we said in our response to the GAO report, we think that, especially for larger projects, it may be feasible. There is, of course, one problem. The other agencies often are unwilling to give us money to study them without taking some control over the results of the project. Of course, that would be entirely inconsistent with the statutory purpose of the Administrative Conference. But we are very interested in it.

FURNITURE PURCHASES

Senator DECONCINI. Does your 1981 budget include anything in it for the purchase of furniture?

Mr. BABCOCK. Yes; but we have purchased no furniture since the GSA moratorium announcement came out. We had audited our furniture before the big uproar about the unused furniture occurred—had already started a physical inventory of our own furniture—and had our own program underway, because there has been an unresolved dispute between ourselves and the General Services Administration.

Senator DECONCINI. Have you purchased any furniture in fiscal 1980?

Mr. BABCOCK. We have bought some in fiscal 1980.

No, I am sorry, we have not bought any in fiscal 1980. We bought some file cabinets and bookshelves, but they are specifically excluded from the moratorium. Our library needed bookshelves. We have not bought any furniture in fiscal 1980, to my best recollection. We don't now specifically plan any acquisitions of furniture in 1981 unless we are given new tasks as a result of the regulatory reform legislation.

Senator DECONCINI. Thank you. We have a few other questions we will submit to you for the record.

Mr. BABCOCK. Thank you, Senator.

Senator DECONCINI. Thank you very much.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Additional Committee Questions

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

MISSION OF THE ADMINISTRATIVE CONFERENCE

Q: The main purpose of the Administrative Conference is to improve the fairness and efficiency of administrative processes and procedures in the federal government with a particular focus on the legal and quasi-legal aspects of these proceedings. Isn't the main thrust of the Administrative Conference complementary and consistent with the administration's overall efforts in regulatory reform?

A: The Administrative Conference's activities are entirely consistent with President Carter's overall efforts in regulatory reform. The Administration's programs, however, are by no means directed only to the Conference's responsibility, which is to "study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies . . . ." 5 U.S.C. 574(1). As set forth in Regulatory Reform: The President's Program, by Richard Neustadt, Associate Director, White House Domestic Policy Staff (1979), the Administration's efforts are focused on three main objectives: (1) economic deregulation (e.g., airlines, trucking and banking), (2) regulatory policymaking improvements (e.g., Sunset legislation, the Regulatory Analysis Review Group, and the establishment of the Regulatory Calendar) and (3) regulatory administration improvements (e.g., the improvements in administrative procedures and ALJ selection and evaluation, as set out in S.755, and the paperwork control procedure established in Executive Order 12174). Much of the thrust of the Administration's program is — unlike the Conference's work— substantive and managerial rather than procedural.

Q: If not, why not? If yes, why shouldn't the functions and activities of the Administrative Conference be included within the Regulatory Council?

A: The Regulatory Council publishes the Regulatory Calendar, serves as an entity through which its members can resolve questions of overlap and duplication in their regulatory programs, and conducts research on questions of regulatory policy. While the Regulatory Council's mandate does not exclude it from undertaking the kind of procedural research that the Conference has traditionally undertaken, it has chosen, so far, to concentrate its research efforts on substantive policy questions. Examples of these are its studies, currently in progress, of the impact of federal regulations on the coal and steal industries, and its sponsorship of a government-wide group working to adopt a national policy on the regulation of carcinogens. Thus the merger of the Regulatory

Council and the Administrative Conference is not required to prevent duplication of effort.

On a broader level, the question is whether the Congress continues to think that the Conference's mission should be performed by a policy-neutral, consensus-seeking body, which has both governmental and non-government representation, or whether the function is better performed within the Executive Office of the President.

Q: Sixty percent of the budget request for the Administrative Conference is for research activities. Could this request be reduced by 10% or 15% with the understanding that the balance would be made up with other agencies' contributions?

A: Yes, if those other agencies would in fact agree to contribute. Agencies have, however, understandably been reluctant in the past to contribute to studies that may result in criticism of their practices. The desire to ensure impartiality presumably has lead the Congress to fund the Conference—and other agencies like it in this respect, such as GAO and the Regulatory Council—directly and independently.

1980 SUPPLEMENTAL REQUEST

Q: The Administrative Conference has requested a 1980 supplemental of $48,000 to fund 80% of the October 1979 pay raise. Why couldn't this small amount be absorbed within the base both for 1980 and for 1981 as well?

A: While $48,000 is a small amount by usual Federal appropriations standards, it is not a small amount to the Conference: it is equal to about 4% of our total appropriation for 1980 and of our request for 1981.

91 MEMBERS CURRENTLY ON THE ADMINISTRATIVE CONFERENCE

Q: The fact that there are such a large number of public members on the Administrative Conference has been criticized as being unwieldly and perhaps unnecessary. In fact, at least one piece of pending legislation (S.262) would reduce the number of members substantially. What is the position of the Administrative Conference on this matter? Couldn't the membership be reduced at least by half?

A: The position of the Conference is that its membership should not be reduced. The membership now consists of an eleven member Council (the Chairman, five public members and five from the government), forty-four members from departments and agencies, and thirty-six public members — a total of ninety-one. S.262, in its present form, provides for a membership of up to twenty-five from the Government and twenty-five from the public. This will substantially reduce the number of members for our nine standing committees, without yielding any compensatory benefits so far as we can see.

It would also preclude us from having representatives from many important governmental entities, thus depriving the

Conference of the benefit of their views, and their votes, on issues that may be of considerable importance to them.

The governmental entities now represented by members include the following: Agriculture, Commerce, Defense, Energy, HHS, HUD, Interior, Justice, Labor, State, Transportation, Treasury, CAB, CCR, CFTC, CPSC, EPA, EEOC, FAA, FCC, FDA, FDIC, FEC, FERC, FHLBB, FMC, Federal Reserve, FTC, GSA, ICC, IRS, NASA, NLRB, NRC, OMB, OPM, OSHRC, SEC, SBA, SSA, USPS and VA. In addition, two memberships are reserved for administrative law judges, on a rotating basis. Reducing this number to twenty-five would require eliminating nineteen from the list given above. Which nineteen would they be? While a very few of these entities may not have a large interest in administrative procedures, I think it is clear that virtually all of the listed entities administer programs which relate closely to the work of the Conference, so that both they, and the government generally, benefit from their participation in Conference deliberations.

Cutting the public memberships by nearly one-third would present similar problems, since these members are selected with a view to obtaining not only outstanding individuals, but also a broad range of interests and perspectives. Furthermore, our public members represent a net benefit to the Government, since each devotes many hours of unpaid service to the work of the Conference.

Finally, while there is obviously some point at which the size of the Conference might become unwieldy, we doubt that a fifty-member body would run more efficiently than the present ninety-one-member body. The full membership meets only twice a year. The rest of the year the Conference works through its standing committees, usually made up of nine members, a manageable figure. Aside from travel costs for out-of-town members (see the last question), the only costs which vary directly with the size of the membership are communications costs, e.g., mailings, phone calls, arranging meetings, etc. These costs are negligible as compared to the benefits obtained from the membership body as it is presently constituted.

Q: How much of the 1981 Budget request is to provide per diem and other financial support for the members?

A: The Conference spent $20,876 on travel expenses for its members in FY 1979, and expects to spend about that same amount, adjusted for inflation, in FY 1981. While the members' expenses incurred in attending meetings are reimbursed, they receive no pay for their service.

PRESIDENT'S COMMISSION ON PENSION POLICY

Senator DECONCINI. We will insert a statement from the Commission on Pension Policy at this point in the record.

[The President's Commission on Pension Policy did not present testimony at the hearing but the following statement was submitted for inclusion in the record.]

[The statement follows:]

Summary of Public Hearings of the President's Commission on Pension Policy for 1979 And Early 1980

March 23, 1979

A day-long public meeting formally initiated the work of the President's Commission on Pension Policy.

A major portion of the session centered around proposals presented by Executive Director Thomas C. Woodruff concerning the Commission's research strategy and a proposal to break the work of the Commission down into study groups. These proposals were adopted. The Commission also approved a strategy aimed at assessing problems relating to retirement income across the whole spectrum, rather than merely a system-by-system examination of retirement income difficulties.

In addition, the Commission endorsed the concept of public hearings around the country as the study groups gather information for interim and final reports to the President and the Congress.

During the afternoon, a recent Lou Harris poll on retirement attitudes was presented by the actuarial firm of Johnson & Higgins. The poll is one of the most comprehensive to date on views towards retirement and retirement income by the benefit population and leaders in private industry.

The Commission received written testimony from Representative Frank Thompson, Chairman of the House Pension Task Force. The public witnesses included: Ewa Bielski, Citizens' Commission on Pension Policy; James L. Martin, Academy for Contemporary Social Problems; Deane E. McCormick, Jr., Association of Private Pension and Welfare Plans; Paul Jackson, National Small Business Association; Steve Kellison, American Academy of Actuaries; and Virgil Day, ERISA Industry Committee.

June 22, 1979

At this meeting the Commission heard reports from each of its Study Groups, adopted a schedule of public hearings for calendar year 1979, and considered staff reports on issues facing the Commission.

Chairman C. Peter McColough noted that the Commission had now moved into the "substantive, and controversial, phase of its work". He emphasized the public role in the Commission's decisionmaking process and said the public hearings schedule had been finalized at the June meeting in order to give the public ample time to prepare testimony and comments for presentation to the Commission.

Executive Director Thomas C. Woodruff reported there had been seven Study Group business meetings since the first Commission meeting in March.

The public witness list included: Donald S. Grubbs, F.S.A., George Buck Consultants; Scott Sterling, National Employee Benefits Institute; W. N. Weaver, President, Retirement Accounts, Inc.; Chester J. Salkind, Executive Director, American Society of Pension Actuaries; Samuel Greenberg; and Peter J. Montagnoli, Organizing Director, Protect Our Pensions Committee.

August 21, 1979

What is an appropriate retirement age or ages? What factors should the Commission take into consideration regarding early retirement and disability retirement? A public hearing of Study Group I examined these questions.

During the morning session the Study Group participated in a panel discussion with several leading experts in the field. The witnesses presented testimony and responded to questions from the Commission.

The panelists were: Michael D. Batten, Senior Staff Associate, National Manpower Institute; Lois F. Copperman, Institute on Aging, Portland State University; Harold L.

Sheppard, Director, Center on Work and Aging, American Institute for Research; and Anna M. Rappaport, Consulting Actuary, William M. Mercer, Inc.

September 28, 1979

This half day hearing on the Role of Public vs. Private Pension Systems and Savings focused on the present relationship between Social Security benefits, employer pensions and personal savings and will discuss the strengths and weaknesses of the present system. Specific topics addressed included:

(1) What has been the historical development of the relationships among public and private pensions and personal savings? (2) What is the experience in other countries with these relationships? (3) What are the current problems in the U.S. with the basic relationships among public and private pensions and personal savings? (4) What are the different effects of the public and private pension funds on productivity, savings and capital formation? (5) Should a benefit in addition to social security be left to private choice? (6) What are the justifications of public subsidies to encourage private pensions? (7) How does one guarantee a viable private pension sector? (8) How should Federal tax policy reflect the fact that saving varies over the life cycle?

A panel of pension experts from the public and private sector initiated the public portion of the Commission's meeting. Chairman McColough labeled the hearing, "the future of the three-legged stool of retirement income."

The panelists were: Alicia Munnell, Vice President and Economist, Federal Reserve Bank of Boston, A. Haeworth Robertson, Vice President, William M. Mercer, Inc., Robert D. Paul, Vice Chairman, Martin E. Segal Company, Karen Ferguson, Director, Pension Rights Center, and Max Horlick, Office of International Policy, Social Security Administration.

Other public witnesses included: J. B. McClintock, National Council of Life Insurance, William M. Agee, Chairman and Chief Executive Officer, Bendix Corporation, Ronnie J. Straw, Director of Research, Communications Workers of America, Paul H. Jackson, Vice President, Wyatt Company, and Jerome R. Gulan, National Small Business Association.

The panelists and the public witnesses presented a variety of options regarding redesign of the different types of retirement income to the Commission.

October 10, 1979

A two-hour panel discussion of Social Security Integration marked the beginning of Study Group 3's consideration of problems associated with present formulas employed by private industry and the public sector.

The panelists were: Richard Schreitmueller, Actuary, Social Security Administration, Daniel I. Halperin, Deputy Assistant Secretary (Tax Legislation), Department of the Treasury, Edwin F. Boynton, Vice President, Wyatt Company, and Leonard Mactas, Partner, Kwasha Lipton.

Following the panelists, a number of public witnesses discussed the philosophy behind social security integration and pointed out both the strengths and weaknesses of the present systems which employ integration methods.

The public witnesses were: John McCart, Executive Director, AFL-CIO Public Employee Department, Richard A. Kuzmack, Mathtech, Inc., Karen Ferguson, Director, Pension Rights Center, William Spencer and Chester Salkind, Executive Director, American Society of Pension Actuaries, G. D. Hurd, American Council of Life Insurance, Carl J. Blechinger, Executive Director, California Public Employees' Retirement System, John S. Mauhs, Deputy State Comptroller, New York State Public Employees' Retirement System, and Dianne Bennett.

In addition to the public testimony, the study group received written statements from Lloyd S. Kaye, Vice President, William M. Mercer, Inc., Donald N. Ledbetter, President, National Association of Postal Supervisors, and Jack A. Marshall, Marketing Director, Savings Bank Association of Massachusetts.

October 19, 1979

Disability benefits are an integral part of many public and private retirement systems with disability benefits often closely aligned with other retirement benefits. This hearing on Disability Retirement addressed these key issues:

(1) How should disability be defined? Should different systems or occupations have different definitions? (2) Should disability payments and vesting be coordinated with age retirement payments and vesting? Should those old enough to receive age retirement still receive disability payments? To what extent is disability retirement used as a surrogate for early retirement? (3) To what degree are there overlaps in disability programs and how are they or should they be integrated? To what degree are there gaps in disability coverage and how should these gaps be treated? (4) How do disability payments affect incentives to work? How are these incentives modified through income tests, continued medical verifications of disability, level of disability payments, and temporary duration of payments? Should disability pensions be tax free? (5) Should disability payments be indexed, and if so, by changes in the cost-of-living or wages? (6) What will be the impact of OSHA, improved medical technology and nutrition, and transportation improvements on the future incidence of work and nonwork related disability?

Public witnesses included: Jonathan Sunshine, Economist, Office of Management and Budget, Paul Van de Water, Acting Director, Office of Policy Analysis, Social Security Administration, Monroe Berkowitz, Professor of Economics, Rutgers University, Benjamin F. Jones, President, Monarch Life Insurance Company, Irvine Dearnley, National Association of Manufacturers, Noel J. Abkemeier, Health Insurance Association of America, Harold Schaitberger, Legislative Director, International Association of Firefighters, J. Hartley Bowen, Vice President, National Association for Uniformed Services.

Roundtable Discussion With State/Local Representatives

Representatives of the American Federation of State, County, and Municipal Employees, the National Governor's Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities and the Municipal Finance Officers Association, all participated in an informal discussion with members of Study Group 2 as part of its October 19th public hearing.

General areas of interest and concern to state/local plans and beneficiaries were explored, including: federal pension standards for state/local government, unfunded liabilities, disability programs, the Urban Institute study of state/local plans, and pension fund investment.

The participants represented many of the major state/local associations in Washington. The meeting was intended to give the Commission a broad view of the problems of state/local pension systems from the perspective of the six organizations involved in the October meeting.

October 24, 1979

The first field hearing of the Commission was held in Detroit, Michigan by Study Group 1. This was the first in a nationwide series of hearings the Commission intends to hold over its two-year life.

The Detroit hearing looked into the effect that inflation is having on efforts to achieve adequate retirement income levels by different pension systems. Testifying at the hearing were: Francis Spaniola, Chairman of the Senior Citizen and Retirement Committee of the Michigan Legislature, Thomas Neubig, Research Associate, Institute for Social Research, University of Michigan, James Hacking, Assistant Legislative Counsel, American Association of Retired Persons, Jack Ossofsky and Dr. Edmund Fitzpatrick, National Council on the Aging, Ewa Bielski, Chair, Citizens' Commission on Pension Policy, Melvin Glasser, Director, Social Security Department, United Auto Workers, Kenneth Olthoff, General Motors Corporation, Thomas A. McNish, Director of Funded Benefit Plans, Consumers Power Company, and Raymond M. Lyons, Vice President, Fruehauf Corporation.

November 29, 1979

Preferential tax treatment is provided in Social Security, private pensions, individual retirement plans and to the aged as a group. This hearing of Study Group 3 looked into Tax Treatment of Pension Contributions and Benefits. Some specific questions that were addressed by the speakers included:

(1) What are the objectives of preferential tax treatment of retirement income programs? (2) Are those objectives being met? (3) Is preferential tax treatment of retirement income programs desirable? What should be the goal of tax policy in this area? (4) Why should savings for retirement purposes be granted preferential tax treatment over savings for a large variety of other objectives? (5) If the Government continues to use tax incentives to encourage retirement savings, should all pension contributions and benefits be taxed uniformally? (6) Is there a justification for treating social security and railroad retirement benefits differently from other retirement income programs? (7) Is the different distribution of benefits by income class in the present tax laws appropriate for a system that is trying to encourage all people to save for their retirement? (8) Should the tax treatment of disability or survivors benefits be the same as for retirement benefits? (9) Should tax benefits be more specifically focused on savings for retirement? (10) Does the non-discrimination test of pension plans guarantee fair treatment of all potential beneficiaries?

The Study Group heard from witnesses who urged both the retention and the modification of the present system.

The participants were: Douglas Sorensen, Attorney-Advisor, Office of Tax Legislative Counsel, Department of the Treasury; John S. Nolan, an attorney with Miller and Chevalier; Harry V. Lamon, Jr. and Stanley H. Hackett, Small Business Council of America; Jeanne Cullinan Ray, American Council of Life Insurance; Richard M. Weintraub, Mercantile Safe Deposit & Trust Company; Robert C. Shadur, Gerald H. Sherman and Stuart M. Lewis, Association for Advanced Life Underwriting; and Ronnie J. Straw, Research Director, Communications Workers of America. In addition, a written statement was received by Jack A. Marshall, Marketing Director of the Savings Bank Association of Massachusetts.

November 30, 1979

The full Commission held its fourth and final meeting of the year. The bulk of the meeting focused on public testimony from numerous women's groups and minority organizations concerning Retirement Income and Coverage of Women and Minorities.

In an opening statement Executive Director Thomas C. Woodruff noted that questions involving the extension of pension coverage, especially in the private sector, are an important consideration of the Commission. He noted that the actual delivery of benefits must be addressed within the same framework.

The public witnesses were:

June O'Neill, Urban Institute, Program on Women & Family Planning; U.S. Representative Patricia Schroeder; Nancy Gordon, Intergovernmental Task Force on Women; Edith U. Fierst, Intergovernmental Task Force on Women; William T. Gibb, American Council of Life Insurance; Dolores S. Delahanty, HEW Secretary's Advisory Committee on the Rights & Responsibilities of Women; Althea T. L. Simmons, Director, Washington Bureau, N.A.A.C.P.; Edward C. Wallace, Assistant Executive Director, National Center on Black Aged; National Federation of Business & Professional Women's Clubs; Sara Kaltenborn, Department of Justice, Task Force Against Sex Discrimination; Fay Young, Gray Panthers; Terry Stewart, Women's Equity Action League; Iris Mitgang, Chair, National Women's Political Caucus; Elizabeth Siegel, Women's Legal Defense Fund; Ronnie J. Straw, Research Director, Communications Workers of America; Elizabeth Thurston and Thelma Rutherford, Citizen's Commission on Pension Policy. A written statement was prepared by Tish Sommers of the Older Women's League.

December 10 and 11, 1979

Study Group 3 held a series of panel discussions, followed by public testimony on the question of Ownership and Control of Pension Fund Assets. The two-day hearing examined a wide ranging series of issues. Panel topics for December 10th were:

1. Role of Non-Management Participants (Active and Retired) in Establishing Pension Fund Investment.

   What should be the role of non-management participants in establishing investment policy? To what degree do they currently have a voice?

2. Proxy Voting Issues

   What are the current practices in proxy voting? Who establishes proxy voting criteria? What is the desirability/feasibility of pass-through proxy voting? What are the administrative needs and costs associated with pass-through voting? What laws or regulations govern proxy voting practices?

3. The Legal Environments for Non-Traditional Investments

   What is the legal environment for non-traditional investing? What guidance is provided by ERISA, trust law? Should public employee pension funds be subject to more stringent fiduciary standards?

December 10th panelists included:

Roy Schotland, Professor of Law, Georgetown University; Randy Barber, People's Business Commission; Communications Workers of America; Karen Ferguson, Pension Rights Center; Mike Leibig, Zwerdling and Maurer; Ronald Rivikoff and Myron Curzan, Arnold and Porter; Gerald Feder, General Counsel, National Coordinating Committee for Multiemployer Plans; James Hutchinson, Steptoe and Johnson; Charles A. Moran, American Bankers Association, Senior Vice President, Manufacturers Hanover Trust Company; Myron Curzan and Mark Pelish, Arnold & Porter; Harold E. Bigler, Vice President, Connecticut General Life Insurance Company; Adrian Collins, Profit Sharing Council of America, Tax Counsel, Exxon Corporation; and Graham B. Harrison, ERISA Industry Committee, President, U.S. Steel & Carnegie Pension Fund.

Panel topics for December 11th were:

1. Portfolio Impacts of Non-Traditional Investments

   What is the impact on portfolio characteristics (risk, return, diversification) of the use of nontraditional investment criteria? Who benefits from superior returns? Who bears the burden of increased risk?

2. Targeting Pension Capital to Regional Economic Development Needs

   Should pension funds be relied upon as a capital source targeted to the needs of regional economic development or urban redevelopment? Is there a need for new financial instruments to match the supply with this demand? To what extent should a sponsor's financial posture influence the investment policies of their pension funds with respect to non-traditional investments?

3. The Use of Pension Assets to Promote Worker Interests

   Should collectively bargained pension funds be invested in ways that promote the unionized sector of the economy?

December 11th panelists were:

Don Smart, Director, Pension Fund Study, Wisconsin Center for Pension Policy; Dr. Douglas A. Love, Buck Consultants; Larry Litvak, Council on Economic Priorities; Andrew Rudd, Business and Public Administration Department, Cornell University; Lee Webb, Executive Director, Conference on Alternative State and Local Policies; James LaFleur, Executive Director, Wisconsin Investment Board; Michael Barker, Staff Associate, Council of State Planning Agencies; State Representative Donald Moe, National Conference of State Legislatures; Claude Poulin, Assistant Director, UAW

Social Security Department; William Sidell, AFL-CIO Building and Construction Trades Department; James S. Freeman, Business Roundtable, Vice President, Union Carbide Company; Hal Sebastian, National Association of Manufacturers, Standard Oil of Ohio; Don Siefman, Counsel, United Food and Commercial Workers Union; Dennis Walton, Local #675 Operating Engineers Pension Fund; and Robert Thompson, U.S. Chamber of Commerce, Compton, Mann & Hartman.

Other witnesses were:

Bruce Marcus, Journalist; Shelley Metzenbaum, Technical Development Corporation; Richard O'Brien, ERISA Industry Committee, Director, Executive Compensation, General Motors Corporation; James Hacking, American Association of Retired People; Everett T. Allen, Jr., Chairman of the Pension Policy Committee, Association of Private Pensions & Welfare Plans; and Roger Smith, Greenwich Research Associates.

January 11, 1980

The full Commission held its first meeting of 1980 and addressed the issue again of what constitutes an adequate retirement income. Inflation's effects on retirement income were also discussed.

The public witnesses presenting testimony at the January 11th hearing were: Bert Seidman, Director, and Larry Smedley, Associate Director, AFL-CIO, Social Security Department; Thomas Borzilleri, Economic Consultant to the Commission; Thomas R. Waylett, Vice President, William M. Mercer, Inc.; George B. Swick, Employee Benefits Research Institute, Chairman, Buck Consultants; Roberta R. Spohn, Deputy Director, New York City Department on Aging, Urban Elderly Coalition; Herbert Heaton, Comptroller, Rockefeller Foundation; Edward J. Sanger, Citizens' Commission on Pension Policy; John N. Feldtmose, Vice President, Johnson & Higgins; Walter Holan, Profit Sharing Council of America and Ronnie J. Straw, Research Director, Communications Workers of America.

In addition, a panel of witnesses addressed the Commission. The panelists were:

Robert L. Clark, Associate Professor, North Carolina State University; James H. Schulz, Heller School, Brandeis University and Richard Wertheimer, the Urban Institute.

February 4, 1980

At a February 4th public hearing involving members of Study Group 1 and 3 a number of labor union representatives presented testimony and participated in a roundtable discussion on the general issues being studied by the Commission. The discussion included comments on proposed legislation to make pensions a subject of mandatory collective bargaining.

Labor organizations represented at the public meeting included: AFSCME; the International Ladies' Garment Workers Union; the United Electrical Workers; the International Association of Machinists; the Industrial Union Department, AFL-CIO; the United Food and Commercial Workers; the International Electrical Workers, and the Office and Professional Employees International Union.

February 25, 1980

Study Group 1 held a public hearing in San Francisco, California to assess public reaction to a working paper issued by the Study Group outlining policy options relating to retirement age policy.

Presenting testimony at Study Group 1's San Francisco session on February 25th were: Robert Gnaizda, Public Advocates, Inc.; Francis Leonard, Counsel, Older Women's League; J. Paul Dowdall, Gray Panthers; Sidney T. Kaufman, Consultant, California Senate Committee on Public Employment and Retirement; Raymond E. Cole, Hewitt Associates; Ernest J. E. Griffes, Director of Employee Benefits, Levi Strauss and Company; Kenneth Amende, Staff Analyst, San Jose Federated Employees' Retirement System; Larry Grissom, Nevada Public Employees Retirement System; Robert C.

Elkus, President, Elkus, Giles and Forster; Kathie J. McKenney, Vice Chair, California Teachers Retirement Board; and Beatrice Schiffman, National Council on Aging.

February 26, 1980

Study Group I concluded its consideration of retirement income questions with a public session on the issues in Los Angeles, California on February 26th.

Witnesses at the Los Angeles hearing were: Dan Arguello, Administrative Assistant, Assemblymen Alatore, Grace Jacobs, National Steering Committee, Gray Panthers; George Short, Alef and Short; Stephen R. McConnell, Research Associate, Greg Castillo, Dissemination Coordinator for Minority Aging and Social Policy, and Phoebe Liebig, Senior Administrative Analyst, Percy Andrus Gerontology Center, University of Southern California; Gary S. Kaiser, Deputy Director, California Department of Aging; William J. Cloer, Vice President, Howard Johnson and Company; Deane E. McCormick, Jr., Association of Private Pension and Welfare Plans; Marshall Prindle, Second Vice President, United Fire Fighters; and Richard Helms, Director, Los Angeles Police Protective League; Ted Oliphant, Jr., Donaldson, Lufkin and Jenrette; Marvin J. Paull, Actuary, Dan McGinn and Associates; Donald Syme, President, Executive Institute and Reeve Darling, President, Los Angeles Consulting Group; Roger DeBard, Scudder, Stevens and Clark; Sartell Prentice, Profit Sharing Counselor; Inez Gerloff; Karl K. Jensen, Director of Legislation, Retired Public Employees Association of California; Donald Pullen, Business Manager, California League of Senior Citizens'; and Ronald Garver, National Associates; and Tony Lamb.

Additional comments were submitted by Phillip L. Matheson, Executive Director, San Bernardino County Office on Aging.

March 13, 1980

The full Commission held a half-day session on March 13th to consider the present and future role of social security in providing a portion of retirement income to most older Americans. In addition to public testimony, the Commission received reports and briefings from representatives of the Social Security Advisory Council, the National Commission on Social Security, and the Universal Social Security Coverage Group.

Witnesses presenting testimony to the Commission were: Donald Grubbs, Buck Consultants, Robert Myers, National Commission on Social Security; Lawrence Thompson, Executive Director, Social Security Advisory Council; Bert Seidman, Director, AFL-CIO Social Security Department; Merton C. Bernstein, Washington University School of Law; Karen W. Ferguson, Director, Pension Rights Center; Edwin A. Klose, President, Klose Associates; James M. Hacking, Assistant Legislative Counsel, National Retired Teachers Association/American Association of Retired Persons; William Zeigler, National Employee Benefits Institute; and J. B. McClintock and John A. Fibiger, American Council of Life Insurance.

Submitting written statements were: A. Haeworth Robertson, Vice President, William M. Mercer, Inc., and Melvin Glasser, Director, Social Security Department, United Auto Workers.

PRESIDENT'S COMMISSION ON PENSION POLICY

Program and Financing (in thousands of dollars)

Identification code 48-2300-0-1-601	1980 Actual	1981 Estimated
Program by activities:		
Administrative expenses (program cost, funded)	1,050	950
Change in selected resources (undelivered orders)	250	-250
10.00 Total Obligations	1,300	700
Financing:		
24.40 Unobligated balance available, end of year	700	---
40.00 Budget authority (appropriation)	2,000	---
Relation of obligations to outlays:		
71.00 Obligations incurred, net	1,300	700
74.40 Obligated balance, end of year	-400	-100
90.00 Outlays	900	1,000

PRESIDENT'S COMMISSION ON PENSION POLICY

Object Classification (in thousands of dollars)

Identification code 48-2300-0-1-601	1980 Actual	1981 Estimated
Personnel Compensation:		
11.1 Permanent positions	456	250
11.3 Positions other than permanent	237	130
Total Personnel Compensation	693	380
12.1 Personnel benefits: Civilian	58	32
21.0 Travel and transportation of persons	120	80
22.0 Transportation of things	3	2
23.1 Standard user charges	36	24
23.2 Communications, utilities and other rent	40	25
24.0 Printing and reproduction	30	60
25.0 Other services	295	82
26.0 Supplies and materials	25	15
99.0 Total obligations	1,300	700

PRESIDENT'S COMMISSION ON PENSION POLICY

Personnel Summary

Identification code 48-2300-0-1-601	1980 Actual	1981 Estimated
Total number of permanent positions	16	16
Full-time equivalent of other positions	5	3
Total compensable work years	21	11
Average ES salary	$49,181	$49,181
Average GS grade	10.79	10.79
Average GS salary	$25,532	$26,032

EXECUTIVE ORDER 12071
(July 12, 1978)
as amended by
EXECUTIVE ORDER 12100
(November 17, 1978)

PRESIDENT'S COMMISSION ON PENSION POLICY

By the authority vested in me as President by the Constitution of the United States of America, and in order to create in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I) an advisory commission on national policies for retirement, survivor, and disability programs, it is hereby ordered as follows:

1-1. Establishment of Commission.

1-101. There is established the President's Commission on Pension Policy. The Commission shall be composed of eleven members.

1-102. The members of the Commission shall be appointed by the President. The President shall designate a Chairman from among the members.

1-2. Functions of the Commission.

1-201. The Commission shall conduct a comprehensive review of retirement, survivor, and disability programs existing in the United States, including private, Federal, State and local programs.

1-202. The Commission shall develop national policies for retirement, survivor, and disability programs that can be used as a guide by public and private programs. Those policies must be designed to ensure that the Nation has effective and equitable retirement, survivor, and disability programs which take into account available resources and demographic changes that are expected into the middle of the next century.

1-203. The Commission shall submit to the President a series of reports. These reports shall include the Commission's findings and recommendations on short-term and long-term issues with respect to retirement, survivor, and disability programs, including, but not restricted to, the following:

(a) present overlaps and gaps among the private, State and local sectors in providing income to retired, surviving, and disabled persons;

(b) the financial ability of present private, Federal State and local retirement, survivor, and disability systems to meet their future obligations;

(c) appropriate retirement ages, the relationship of the annuity levels to past earnings and contributions, and the role of current retirement, survivor, and disability programs in private capital formation and economic growth;

(d) the implications of the recommended national policies for the financing and benefit structures of the retirement, survivor, and disability programs in the public and private sectors; and

(e) specific reforms and organizational changes in the present systems that may be required to meet the goals of the national policies.

1-204. The Commission shall submit its final report, including its recommendations and findings, to the President prior to its termination.

1-3. Administrative Provisions and Financial Support.

1-301. At the request of the Chairman each Executive agency that has an interest or responsibility in the areas of the Commission's functions shall designate an individual to act as liaison with the Commission and its staff.

1-302. In performing its functions, the Commission shall seek the advice of individuals and groups interested in policies applicable to retirement, survivor, and disability programs and systems. In seeking advice from interested individuals and groups, including public and private organizations, the Commission or any committee thereof, may, among other activities, hold hearings and sit and act at such times and places as the Commission or such authorized committee may find advisable.

1-303. The Commission may request any Executive agency to furnish such information as may be helpful for the fulfillment of the Commission's functions under this Order. Each such agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish such information to the Commission.

1-304. The Chairman is authorized to appoint and fix the compensation of a staff, including not more than one position at the GS-18 level, as may be necessary to enable it to carry out its functions. The Chairman may obtain services in accordance with the provisions of Section 3109 of Title 5 of the United States Code, to the extent funds are available therefore.

1-305. Each member of the Commission who is not otherwise employed in the Government may receive, to the extent permitted by law, compensation for each day he or she is engaged upon the work of the Commission at a rate not to exceed the maximum daily rate now or hereafter prescribed by law for GS-18 of the General Schedule, and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service employed intermittently.

1-306. The General Services Administration shall provide administrative services, facilities, and support to the Commission on a reimbursable basis.

1-307. All necessary expenses incurred in connection with the work of the Commission shall be paid from the appropriation for "Unanticipated Needs," in the Executive Office Appropriations Act, 1978, or from such other funds as may be available.

1-4. General Provisions.

1-401. The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Administrator of General Services.

1-402. The Commission shall terminate one year after the effective date of this Order.

1-403. This Order shall be effective on September 21, 1978.

/s/ Jimmy Carter

SUBCOMMITTEE RECESS

Senator DECONCINI. We will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 12:15 p.m., Wednesday, April 30, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, May 1.]

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1981

THURSDAY, MAY 1, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:08 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. Lawton Chiles (chairman) presiding.

Present: Senators Chiles and Bumpers.

GENERAL ACCOUNTING OFFICE

STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, GENERAL ACCOUNTING OFFICE

ACCOMPANIED BY:

JOHN D. YAKAITIS, TEAM LEADER

JEROME H. STOLAROW, DIRECTOR, PROCUREMENT AND SYSTEMS ACQUISITION PROGRAM

OPENING REMARKS

Senator CHILES. Good morning.

This morning the subcommittee will hear testimony from the General Services Administration. While we do intend to hear the 1980 and 1981 budget proposals, the initial focus of this morning's hearings will be on the multiple award schedules program. Under this much criticized program, GSA awards over 8,000 contracts annually for about 4 million different items. Each year over $2 billion in purchases are made from the multiple awards schedules.

Over the last 10 years, audit report after audit report has uncovered inefficiency and waste in the operation of this program. Ironically, during that same period the program has grown and grown; and while many reform efforts have been started, we have seen little in the way of results.

GSA efforts to reform this program have failed not for a lack of policy blueprints, not for a lack of Federal Supply Service directives, not for a lack of milestone charts, audit followup and deadline dates; these efforts have failed primarily because GSA's management has lacked the will and ability to sustain any reform effort and to follow through on their commitments made to the Congress and to GAO.

GSA is embarked on another reform program right now, and I believe that we have a real chance to turn this thing around. Still, in view of the track record, I cannot help but be apprehensive about its chances for ultimate success.

At this time I would like to call on Elmer B. Staats, Comptroller General of the United States, to provide the subcommittee with testimony to give us some background on this program and recommendations regarding the actions needed to improve it.

Mr. Staats, we are delighted to have you here. We want to thank you and GAO for all of the work you have done in regard to GSA and the problems that we have had and the efforts that we are trying to make in order to correct it.

Mr. STAATS. Thank you, Mr. Chairman. I do have a fairly brief statement which I would like to read. Then we would be happy to respond to your questions.

HISTORY OF GSA ACTIONS ON GAO RECOMMENDATIONS

Between 1973 and 1977, we have issued four reports dealing with GSA's multiple award schedules program. Although GSA agreed with most of our recommendations for improvements, few changes have resulted.

We also completed a comprehensive audit of the schedules program and issued a report on May 2, 1979—just 1 year ago—entitled "Ineffective Management of GSA's Multiple Award Schedule Program—a Costly, Serious, and Longstanding Problem."

In essence, our report pointed out that: The multiple awards schedules do not provide assurance that the Government is obtaining the lowest possible prices; most of the 4 million items could be purchased competitively; GSA did not know what the agencies were buying under the schedules program; there were many items of a questionable nature available for purchase; there were too many suppliers of similar items; and the program, overall, could not be managed effectively.

We made eight major recommendations to GSA in this report for improving the program. In summary, we stated that: (1) GSA should develop criteria for determining which items should be procured competitively and which should be purchased by using multiple awards; and (2) for those relatively few items which should remain on multiple awards schedules, GSA should improve the contracting process.

As was the case with our prior reports, GSA agreed with all eight recommendations. GSA, however, has not as yet significantly reduced the number of multiple award items nor their resultant sales. For fiscal year 1979, GSA reported sales of $1.77 billion from 116 schedules and estimates fiscal year 1980 sales from approximately 113 schedules to approach $2.16 billion. This represents an increase in sales of approximately 18 percent.

We have been concerned over the years that although GSA management almost always agreed with our conclusions that the multiple awards schedules program needed improvement and agreed to take action on our recommendations, nothing has been done. For that reason, we suggested in our last report, and in related testimony, that the Congress consider legislation mandating certain actions by GSA and prescribing reasonable timeframes for accomplishment of those actions.

While we recognize that the current management of GSA is faced with many serious problems, we are still disappointed that so little progress has been made in this very important area. We continue to believe that a clear expression of congressional desire to correct the problems is both necessary and desirable.

GSA ACTIONS TO IMPROVE THE MULTIPLE AWARD SCHEDULES PROGRAM

GSA has taken only sporadic action to improve the program. Last year there was a flurry of activity about the time we issued our report, but soon thereafter the activity almost ceased.

On April 19, 1979, the GSA Office of Acquisition Policy prepared a policy document on multiple award schedules which addressed 14 general management areas and 13 specific policies requiring implementation. We believe this document constitutes an excellent guideline for devising specific procedures to improve the schedules program.

However, at the beginning of our current review in February 1980, GSA had completed action on only two specific policy matters: (*1*) late offer proposals; and (2) relaxation of schedule mandatory use requirements which permits agencies to purchase items off schedule if an identical item is cheaper.

Also, in April 1979, GSA appointed a Schedules Program Manager as an attempt to give the program top level management attention. Four persons have occupied this position within the past year and, consequently, little has been accomplished. The position does not carry the necessary authority, its duties have not been delineated adequately, and the responsibility the Manager must have to operate effectively is still dispersed throughout the organization.

GSA's actions to date have not addressed the really crucial issues of reducing the number of schedules and improving the multiple award contracting process. The schedules have continued in force and still represent a major source of supply for Federal agencies.

Progress has also been slow in:

One: Market research, GSA has only recently developed a questionnaire for issuance to customer agencies to assess the types and quantities of typewriters being procured. Other than this effort, little has been accomplished regarding other multiple award items.

Two: Deletion or restriction of schedules, GSA has not eliminated or restricted additional schedules other than eight schedules it took action on in July 1979.

Three: Commercial item description (CID) development, significant savings could be realized through competitive award of many products currently on the multiple award schedule. CID's are needed to facilitate this needed competition. GSA has developed 56 CID's for multiple award items and advised us that an additional 5 CID's should soon be available in draft. However, no procurements have been made using any of these CID's.

Four: Management information systems development, GSA is currently using information from agency furniture procurements to develop a model for a multiple award data base. This furniture information system, which is scheduled to be available by October 1980, will be used to forecast agency requirements. GSA does not expect to have information systems available for other major product categories until the furniture model becomes operational.

Progress has been more evident in the areas of training and internal audit. In comparison with only 11 audits performed during fiscal years 1977 and 1978, GSA internal audit has issued 7 reports and begun 22 reviews during fiscal years 1979 and 1980.

It has also scheduled an additional 29 reviews for the third-quarter of fiscal year 1980.

Internal audit has found that vendors have submitted defective pricing data, violated the contract price reduction clause, and inaccurately billed the Government. As a result of these and other findings, internal audit has recommended cash recoveries of approximately $1.1 million on the seven completed audits. As of April 15, 1980, $126,000 has been recovered.

In accordance with our May 1979 report recommendation that GSA improve the procurement education of its contracting officers, on December 18, 1979, GSA established a contractor officer warrant program. Its purpose was to insure that only those officials who are qualified to obligate the Government are appointed as contracting officers.

GSA has identified 17 courses, such as cost and price analysis, contracting by formal advertising, and negotiation techniques, which are required at various levels of responsibility. Seven of these courses are expected to be available by May 1980. By April 15, 1980, GSA contracting officers attended courses on 80 occasions.

CURRENT GSA INITIATIVES FOR IMPROVEMENT

Soon after we started our current review in February, the GSA Federal Supply Service Commissioner initiated a revised approach to improve the program. He created a task force of about 60 persons under the guidance of the new Schedules Program Manager.

This task force has been charged with eliminating or restricting 12 multiple award schedule items by this month and conducting test purchases by September 1980 on 13 item categories using competitive methods.

The Commissioner expects significant progress in both of these areas by this month.

By September 1981 the task force is charged with conducting test purchases on an additional 12 item categories. These latter items represent sales of about $1 billion and GSA expects to save $100 million by fiscal year 1982.

Other major tasks given to the task force include: (1) Recruitment of an industry consultant for advice on production and marketing factors; (2) the development of procurement strategy; and (3) monitoring results.

CONCLUSIONS

We believe that the recommendations contained in our May 1979 report are still valid and should be fully implemented as soon as possible. We believe GSA's current plans are responsive to our recommendations and deserve the support of this committee and the Congress.

We believe that continued congressional oversight is necessary to make sure that GSA completes the needed program reforms in a timely manner. As I mentioned earlier, we believe that GSA should be put under a mandatory time constraint to overhaul the multiple awards program. As a minimum, you should consider having GSA report the status of its actions to your subcommittee quarterly using their internal reporting system as the basis.

This completes our statement, Mr. Chairman. Mr. Stolarow, to my left, I believe you know, is head of our Procurement and Systems Acquisition Division. Mr. Yakaitis is the team leader on the work we are carrying on now on this program in GSA.

Senator CHILES. Thank you very much for your statement. We are in a cloture vote right now. So I think I will slip over there and vote and then I will come back and start the questioning.

[A brief recess was taken.]

INEFFECTIVE STEPS BY GSA TO IMPROVE THE PROGRAM

Senator CHILES. If we were to summarize your testimony on multiple award schedules, would it be fair to say that in spite of four GAO reports issued since 1973, and in spite of hearings held by this committee over 1 year ago on this subject, GSA has still not taken any effective steps to improve the program even though such improvements were estimated by GSA's internal audit report in 1970 to save over $100 million a year?

Mr. STAATS. I think that is a fair summary, Mr. Chairman. As I point out in the statement, toward the end of our statement, there are a number of very recent steps taken which are very promising, but I think that would be a fair summary of our position.

POSSIBLE SAVINGS BY REDUCING PROGRAM SIZE

Senator CHILES. The estimate of $100 million in savings was made in 1970 and was based on a program procurement of approximately $600 million. So now with over $2 billion in sales estimated for 1981, under that theory, the savings could approach some $350 million; is that correct?

Mr. STAATS. That was a GSA auditor's estimate I believe you are referring to.

Senator CHILES. That is right.

Mr. STAATS. We have done some work trying to develop various alternative ways of measuring what the potential savings would be. We have made estimates that would run up to $500 million.

But it is quite a range of possible savings, depending on what assumptions you make. But the range would be up to $500 million.

Senator CHILES. Up to one-half billion dollars then under the assumptions you made?

Mr. STAATS. Yes.

AUTHORITY AND RESPONSIBILITY OF SCHEDULES MANAGER

Senator CHILES. You mentioned that the Schedules Manager should be given more authority and responsibility. As it now stands, any responsibility for the multiple award schedules program is diffused among the various elements of GSA's Federal Supply Service.

Could you provide the subcommittee with an example of this diffusion?

Mr. STAATS. I would like to turn to my colleagues here, if I may.

Senator CHILES. Yes.

Mr. STOLAROW. Mr. Chairman, while organizational problems are very difficult to assess and their impact, we feel that the Program Manager doesn't have all of the authority that he needs to get the job done.

A couple of examples would be in the area of procedures to implement the acquisition policy. While he has to develop these procedures to correct the problems we have been talking about, he has no real authority to enforce their implementation. That is diffused among other management parts of the organization.

Another example would be that the Office of Programs and Requirements in the Federal Supply Service is responsible for developing the commercial item descriptions which are key to being able to get competitive procurement and also for doing market research to determine the volume of sales. Yet the Program Manager has no line authority over these particular functions which are key to corrective actions we are talking about.

LOWER PRICES AVAILABLE UNDER STATE CONTRACTS

Senator CHILES. In the hearing I held in February 1979, we stressed the importance of reducing the number of items on the schedule and the number of firms selling through the schedule in an effort to move more of this procurement into a competitive mode.

For example, we compared the competitive procurement system of GSA with the State of California and found that California was spending $227 for a typewriter and GSA was spending $294 for the same model, some 23 percent more.

Based on the testimony that you presented here today, would it be fair to say GSA still has no criteria or effective way to determine whether an item belongs on the multiple awards schedule?

Mr. STAATS. Generally that would be correct. You will recall, Mr. Chairman, from our experience on the Federal Procurement Commission that one of the things we stressed very heavily was the need to get maximum competition in the market for commercial-type items. I think this is an illustration of what we were talking about.

In our May 2, 1979, report, we also reflect some examples drawn from our work in the State of California. Mr. Stolarow, I think, can supply you with some from our report which I think are probably more dramatic even than the one you mentioned.

Senator CHILES. I think those would be helpful.

Mr. STOLAROW. We can submit a complete list for the record.

[The information follows:]

SCHEDULE OF PRICE DIFFERENCES BETWEEN THE STATE OF CALIFORNIA AND GSA MULTIPLE AWARD SCHEDULES FOR THE SAME PRODUCT MODELS

Commodity	Product model	GSA multiple award schedule unit price	California unit price	Difference
Calculator	Sharp CS-4263	$319.20	$231.50	$87.70
	Sharp CS-4163	279.20	226.26	52.94
Dictation equipment	Lanier ED-D	346.26	[1] 148.50	197.76
	Lanier ED-T	346.26	[1] 148.50	197.76
	Lanier ED-C	385.41	[1] 172.50	212.91
Typewriters	Olympia GSNFR-13	495.04	342.73	152.31
	Olympia GSNFR-15	518.06	352.24	165.82
	Olympia GSNDR-13	518.06	359.80	158.26
	Olympia GSNDR-15	541.09	374.75	166.34
Lamps	Sylvania 1500-99-XL	7.09	4.14	2.95
	Sylvania F100-T15-CW	3.96	2.35	1.61

[1] The vendor for the State said that a "bid machine" was furnished to the State. This machine is not the same one as on the multiple award schedule. Shortly into the contract period with the State, the vendor began supplying the same equipment as on the multiple award schedule, because production of the bid machine was halted. The State received the same prices for this comparable equipment. We believe that the approximate 50-percent price differential is representative, based on our review of bids of other vendors for identical equipment as on the multiple award schedule.

STATE OF CALIFORNIA PAYS LOWER PRICES FOR TYPEWRITERS

Mr. STOLAROW. Just on typewriters, your one example is in the area of 23 percent savings. We found on a wide range of typewriters, last year, that the savings were even higher, about 27 percent, between California and the Federal Government.

Mr. STAATS. You might cite some of the specific examples.

Mr. STOLAROW. One example, for an Olympia GSNFR-15 typewriter, the multiple awards schedule price is $518.06. The State was buying it for $352.24—a difference of $165 on a $500 item.

Senator CHILES. Certainly California is not buying in the quantity that would change that. So that is not a quantity there.

Mr. STOLAROW. That is right. Another significant point about this is that the State was often able to get better terms on delivery, and warranty, and minimum order quantities than the Federal Government was getting for the same item. So even by paying a lesser price, they were getting better terms.

BENCHMARK DISCOUNTS DO NOT INSURE BEST PRICES

Senator CHILES. Would it be fair to assume from your statement then that even if an item belongs on a multiple-awards schedule, GSA has not taken sufficient steps to insure that the Government obtains the best possible deal?

Mr. STOLAROW. That is correct. I think the basic procedure that GSA has been using over the years is what is called a benchmark discount. We and the GSA auditors have found many serious problems with the way those benchmark discounts are negotiated and followed up and administered.

They have recently changed their procedures, but we really don't see that the changes are significant or that they will cure the problems that they have had in the past.

MANDATORY TIME CONSTRAINT FOR IMPROVING THE PROGRAM

Senator CHILES. Mr. Staats, at the conclusion of your testimony you recommended that GSA be put under a mandatory time constraint to overhaul the multiple award program, or at least they should be required to report on its progress on a regular basis to the Congress.

What sort of time constraint do you feel would be reasonable, and what form should the reporting take?

Mr. STAATS. I guess what we are really saying here, Mr. Chairman, is that in view of the rather long history of recommendations that our office has made and that the Procurement Division has made and so on, that unless there is some kind of a specific schedule developed, against timeframes, that we still won't have the kind of assurance we need to bring about the changes we think need to be brought about, which I think both we and GSA agree should be obtained.

I don't know exactly what timeframe we are talking about. We would be thinking I guess within the next 2 or 3 years.

STEPS GSA NEEDS TO TAKE

Senator CHILES. As I see it, any reform of the multiple awards system has to be sort of a three-pronged effort. First, we need to get off the schedule those items that don't belong there. Second, we must rely on more competition to get the better products at a lower price. And that is the second step that I think could save the Government the most appreciable amount of money. And third, we need to determine what products, if any, can be purchased most efficiently through the schedules program and then tighten up the operations itself of the program.

Do you agree those are the steps that we need to take?

Mr. STAATS. I think that is a very good summary of what we have included in our most recent report. We have just undertaken, Mr. Chairman, a further review which was started in February, I believe. Mr. Yakaitis is in charge of it. But so far what we have found would seem to support the conclusions we made in our May 2, 1979, report.

I think your statement is a good statement of what the issues are.

Senator CHILES. We thank you very much for your testimony and again for the work that you all have done in this area. We are going to try and see if we can follow up on it and get some results.

Mr. STAATS. Thank you very much.

Senator CHILES. Thank you.

GENERAL SERVICES ADMINISTRATION

STATEMENT OF ADM. ROWLAND G. FREEMAN, III, ADMINISTRATOR

ACCOMPANIED BY:

TOM MORRIS, COMMISSIONER, FEDERAL SUPPLY SERVICE, GSA
RAY FONTAINE
ROY MARKON
MIKE MARSCHALL

MULTIPLE AWARD SCHEDULES PROGRAM

Senator CHILES. We will now go to GSA. I understand that both Admiral Freeman and Mr. Morris are here and have statements to make.

Before we begin the actual budget proposals of GSA, I would like to continue for a time on the multiple award schedules program. Mr. Morris, maybe if you will come up, too. Admiral, we are delighted to see you this morning.

Admiral FREEMAN. Good to see you, sir.

Senator CHILES. I would like to kind of touch on the multiple awards first.

Admiral FREEMAN. I will deal with that and then we will talk about the rest of it.

First of all, I think the attention drawn by this committee on oversight to the multiple award schedules area has been most appropriate. I would like to make just a few opening comments before I introduce Mr. Morris.

I think that the committee is aware we have undertaken a number of management initiatives in the past year. Your comments about lots of plans and no product I appreciate.

One of the most important areas and one which is of particular interest to you, that has generated many comments, is the use of multiple awards.

In my opinion, we experienced 10 years of inadequate progress in this area. As commented upon briefly, there are at least a dozen major audits, including GSA and GAO audits. I wholeheartedly agree with the comments of Mr. Staats of the General Accounting Office that our initiatives in this area have at best been cosmetic and inadequate.

Our studies reveal, from not only my experience inside the agency but externally, that the schedules are a lazy man's way of purchasing. They have in some cases provided unreasonable profits to vendors and an unreasonable variety of choices to agencies. They are open to abuse because of lack of commodities and expertise in the use of requirements.

The original concept of the use of these multiple schedules for new product initiation has long since been forgotten. Therefore, I personally believe, and very strongly, that many, if not most, of the multiple schedules we have now should be canceled, that competitive procurement should be substituted for the purchase of these items.

To achieve this goal, we have set up the task force which Mr. Staats previously commented on and on which Mr. Morris will elaborate. Our objective over the next 2 to 3 years is to convert to more competitive buying over 80 percent of the dollar volume currently on the multiple awards schedule, which includes items valued at approximately $2 billion annually.

This will be accomplished by developing standard product lines to eliminate proliferation of items, commercial development of commercial item descriptions, and by expanding what I think is a very valuable asset—local procurement—where we can increase competition.

With those comments, I would like to turn to Mr. Morris to comment on our further efforts in this area.

Senator CHILES. Mr. Morris?

Mr. MORRIS. Thank you, Mr. Chairman.

Mr. Chairman, we reported to you about 1 month ago, in March, on the efforts we had then started in the furniture program. We had a five-step program we outlined. I think the most important of those steps, which bears upon what we will talk about this morning also, is getting in place in the Federal agencies authoritative officials—Property Management Officers we call them—to whom we can look and with whom we can work to get requirements established and to better manage these commodities. I just mention that because it is an important step which contributes to our next subject.

We started at the end of March studying this long history of GAO and GSA audit reports. We talked to Mr. Hall on or about March 24, about the new initiative that we planned to launch and which we subsequently, for the last 5 weeks now, have had in place.

We think that for the first time we have a permanent action producing work plan under top level authoritative leadership, on which we can report this morning on results. I can assure you these are permanent actions that will carry on until we fully accomplish the objectives that Mr. Staats laid out during the next 2 to 3 years.

EXAMPLES OF ACCOMPLISHMENTS

Let me just mention three examples of what we have done in the past 5 weeks. We now have 72 commercial item descriptions that will be used for competitive procurement in lieu of items now on multiple award schedules. We would be delighted to put those in the record, if you wish.

We developed action plans which will result in solicitations between now and the end of this fiscal year for well over $100 million of commodities. The first solicitation I received in the mail this morning from the New York region where it is to be issued, is for xerographic paper. For the first time in history we are buying this commodity on a fully competitive basis through formal advertising with award to the lowest price responsible and responsive bidders throughout the country. I think this is a milestone. We are using a commercial item description—CID—to conduct this competition.

Senator CHILES. What you are saying is a number of people will be able to compete now and determine whether they would wish to sell the Government xerographic paper?

Mr. MORRIS. They can compete under formal advertising for these awards, but the awards will go to the lowest responsible and responsive bidders in five zones we have established throughout the country and in certain quantity brackets in each of those zones. So there should be a real price competition.

Senator CHILES. The commercial item description, the CID, spelled out what the quality would have to be of the paper, or what——

Mr. MORRIS. What it must meet in terms of performance specifications. The CID itself is not an extensive document. It is one page. Essentially it says it has to work on given types of machines——

Senator CHILES. I am happy to see a one-page document. [Laughter.]

Mr. MORRIS. Yes, sir. We are, too.

Third, as a result of the actions we have taken and planned in the past 5 weeks, we have canceled schedules or items on schedules equal to about 6,000 items at this time. That is not a large number out of the total universe of 4 million we have to cope with. But they are 6,000 important items. We are working on how to evaluate them, to start with.

Senator CHILES. You are starting off with high-value items?

Mr. MORRIS. Yes, sir. We are trying to give priority to those items that are important either because of dollars or the extensiveness of their use, or because we can make progress due to past research.

Admiral FREEMAN. If I could comment, the CID's involve the marketplace and where we are quite sure the commercial marketplace is sufficient to support what we are trying to do.

Mr. MORRIS. Over the next 18 months we do have an action plan whose goal is to convert $1 billion of the multiple awards schedule to competitive procurement. Again we are going to deal with high-value items first where we can make the most rapid progress. We have set $100 million as our target for savings. That is an estimate. I agree it is far less than what we are going to do in the long term. I expect to double or triple that number as we move along. We will be glad to keep you advised of what we think we can really achieve.

The actions we have taken are the result of four kinds of improvements. I would like to quickly summarize them. They are spelled out in detail in our prepared statement.

The most fundamental of these improvements is to put in place a full-time Director of Acquisition Planning reporting directly to me and with my authority to operate throughout the Federal Supply System structure. As Mr. Stolarow said, we have a functional organization, with market research specialists, requirement specialists, specifications specialists, and contracting specialists. But you have to knit all of those specialists together on xerographic paper, for example, to make any progress. That is what the Director of Acquisition Planning will do. He will form teams, task forces, and work groups that will be full-time reporting to him until he gets the job done in each commodity area. It is just like the Defense Department approaches the design, development, and production of new weapons systems by appointing four project managers. It is a very similar analogy.

That is the goal that has been set for this new executive who was appointed by the Administrator in the last few days. I will be glad to furnish for the record a statement of his responsibility, if you would like to have that.

Senator Chiles. We would like that for the record.

[The information follows:]

Acquisition Planning Office

The Acquisition Planning office will be headed by a Director who will report directly to the Commissioner, FSS. Responsibilities of this office include nationwide oversight of the FSS schedules program to insure its effectiveness as a supply support program; developing and monitoring policies and procedures relating to definite quantity contracts, expeditious processing of agency requirements which exceed the maximum order limitations of schedules, and the aggregation of agency requirements under the schedules program; and insuring the operation of these programs is in accordance with established policies and procedures.

ACQUISITION PLANNING

Mr. Morris. The important thing to stress is that the work we will do involves going through a very systematic four-step process on each commodity. If I may, I would like to show you a simple chart that brings to life what is otherwise an abstract subject.

Senator Chiles. Fine, we will insert the chart in the record.

[The chart follows:]

Market Research/Acquisition Planning

KNOW THE MARKET PLACE

Commercial market research:
- Product lines
- Product suppliers
- Product availability
- Product acceptability
- Method of supply manufacturer distribution
- Special or unique characteristics
- Cyclical trends
- Other commercial users
- State and local governments
- Trade and technical associates

KNOW THE GOVERNMENT'S REQUIREMENTS

Government users:
- Agency/locations
- Quantity/frequency of demand of item
- Storage and distribution capabilities

Special/unique applications
Requirements validation (projected needs)
Utilization of excess

KNOW THE TECHNICAL REQUIREMENTS

Similarities/difference of product line
Special handling storage-shipping requirements
Performance requirements (CID's)
Quality requirements

KNOW YOUR BEST ACQUISITION STRATEGY

Maximum competition
Specify definite quantity requirements
Determine supplier capacities
Award based on LCC when possible
Maximum use of:
- Two step process
- Bid sample test

Determine "best" quantity price breaks
Encourage agency use of BPA's
Use of commercial distribution facilities

ACQUISITION PLANNING PROCESS

Mr. Morris. What we literally must do for every item we convert to a competitive bid is, first, "know the marketplace." That means we have to become acquainted indepth with our suppliers, how they function, how they sell their products to the commercial market, whether they operate direct or through distributors, and we must do this as well with State and local governments and trade and technical associations.

Just last week we had a telephone conference with California, Texas, and Maryland talking to them about how they purchase some of their products. We are going out to sit down with those people and work together on whatever we can to exchange lessons and move ahead together.

The second step in acquisition planning, and the one that has been the biggest single missing element is knowledge of the Government-users requirements. We simply haven't known how much xerographic paper our agencies need or how frequently they consume it.

Senator CHILES. I found a little Xerox paper in some warehouses.

Mr. MORRIS. Yes, I know you did. But we in recent weeks have been going, for example, to military bases and we have found that at Randolph Air Force Base they can take a truckload every 2 weeks. So we are planning to buy for Randolph Air Force Base in truckload quantities, not in small loads we put in warehouses. We are going to do that throughout the country in order to establish carload and truckload orders on a scheduled basis.

This is in addition to the competitive procurement of xerographic paper I mentioned earlier. This illustrates the importance of getting down to the customer level and knowing what their needs are and working with them to plan on how best to meet those needs.

The Property Management Officers will be getting into these studies.

The third step in acquisition planning is to know the technical requirements for the commodity—but not to overspecify as we tend to do in the Federal specifications area. That is why we fully expect to go to commercial item descriptions for the majority of these multiple award schedule items. That is a committed goal. I found we were spending most of our time on Federal specs for stock purchases. I have changed that now. We will spend most of our time on CID's for multiple award schedules being converted to competitive bids.

After this knowledge has been gathered we can develop the method of buying. And there will often be more than one method. California has a system called two-step procurement. It makes a lot of sense. We will want to try that in some cases. But the important thing is that we have to get specialized knowledge in those four key areas on each commodity—typewriters, xerographic paper, whatever—and work out the total acquisition plan and then put it to work. We can't just depend on the functional organization to do that itself. That is the reason I wanted to use the chart, sir.

IMPROVED POLICIES

The second major improvement of the past few weeks has been to bring to the point of final decision and formal action a number of policies, pricing in particular, which have been hanging fire for some months, if not years. Again, GAO referred to the fact that only two had been implemented since 1 year ago.

I can now assure you that we are in the process of implementing all of the policy changes that have been recommended to us insofar as we feel this is possible to do.

I would like to mention three things that I think are particularly significant.

One is the change in the past 2 weeks in the use of what we call net pricing as the key criterion in making awards for multiple award schedules where we continue them. This is in lieu of relying altogether on what is called a "benchmark discount," which alone does not necessarily give you the best pricing arrangement. We now have issued directives that will make net pricing a fundamental consideration wherever it can be used.

Second, we have said in that connection that we look on all multiple award schedules as simply a temporary method of supply, to be kept only as long as it can be justified, and to be abandoned when we can go to definite quantity or guaranteed minimum quantity competitive purchases.

Another policy deals with price comparison shopping. We have heard complaints. We heard Mr. Stolarow just now making price comparisons on typewriters. We have issued instructions to all Federal users. We want them to constantly be on the lookout for suitable items at lower prices and to let us know as soon as they find them. We will, of course, be doing that through our own regional offices and headquarters staff.

As we find better opportunities to buy, we will move immediately to cancel what is on schedule and go to better opportunities wherever we can.

Third, we are reducing what is called the maximum order limitation. Every schedule item has a ceiling quantity per order above which we reserve the right to buy competitively.

For example, on rubber stamps, the limitation is set at $15,000 before we can go out on a competitive bid for specific procurements. We will reduce the maximum order limitations to force more individual competitive purchases where the item qualifies and we can get good competition in the marketplace.

We are delighted with the increased audit attention that GSA's audit staff is now giving us. It is at least double what it has been in past years, both preaward and postaward, and it will be a source of greater contractor intelligence in future negotiations.

Our basic buying strategy will be to reach the producer and work directly with him wherever possible instead of dealing through middlemen.

Many of the above practices represent important changes of attitudes on the part of over 200 people in my organization. I realize I must constantly work with those people to use case studies and to get them to understand the importance of what you and GAO have been advocating over the last few years.

The third major improvement that we have instituted is more emphasis on item reduction, the very point you made a few moments ago. We have already discontinued a large number of schedules that have sensitive-type items that don't appear to be necessary for Government uses. Just this week we issued further instructions to begin the search for other schedules that need to be restricted, and we have listed 15 and asked every agency to examine their need for those particular schedules, with the idea of either restricting their use or discontinuing it. I am referring to things like motel furniture, lawn and garden equipment, and items of that type.

As an immediate matter we have also issued new regulations to reduce items on schedules and put them out to local purchase where the actual bulk quantities are small. We are using $10,000 as the break point. We expect this by itself may eliminate 10 to 20 percent of the items out on schedule.

The last of the major improvements that we have inaugurated in the past 5 weeks is to put every one of the 113 schedules on trial and to make it prove itself or prove that we can convert it to competition. As I say, we expect to attack $1 billion of schedule purchases in the next 18 months and the total of $2 billion over the next 2 to 3 years.

During the past month we have planned a number of competitive procurements, of which xerographic paper is the first. We will have about a dozen others by September 30, including such items as electric typewriters, electronic calculators, overhead projectors, lamps, and others to be added later.

We acknowledge the importance of maintaining close oversight and visibility of what we are trying to accomplish, and quarterly reporting would be most acceptable, Mr. Chairman, if you would like us to report to you that frequently.

That concludes my summary. Our prepared statement is much longer.

PREPARED STATEMENT

Senator CHILES. We will put your prepared statement in full in the record.

[The statement follows:]

Statement of Thomas D. Morris

WE ARE PLEASED TO REPORT TO YOU ON OUR CURRENT EFFORTS AND PROGRESS IN ACTING ON THE FINDINGS OF GAO AND GSA AUDITORS REGARDING MULTIPLE AWARD SCHEDULES.

ON MARCH 24, 1980, WE REPORTED TO YOUR STAFF THAT OUR NEW MANAGEMENT TEAM IN THE FEDERAL SUPPLY SERVICE HAD FOUND A 10-YEAR HISTORY OF PROMISES TO MAKE IMPROVEMENTS, BUT CONTINUING LACK OF SIGNIFICANT RESULTS. I CAN ASSURE YOU THAT THE RECENT STEPS WE HAVE TAKEN AND OUR PLANS FOR THE FUTURE ARE RESPONSIVE TO EVERY RECOMMENDATION WHICH HAS BEEN MADE. FURTHERMORE, I AM DELIGHTED WITH THE COOPERATION WE ARE RECEIVING BOTH FROM GAO AND GSA AUDITORS AS WE ATTACK THESE PROBLEMS.

THIS STATEMENT DESCRIBES THE FOLLOWING:

A. THE ROLE AND RATIONALE FOR SUPPLY SCHEDULES,
B. THE PROBLEMS WHICH HAVE BEEN IDENTIFIED IN THE DEVELOPMENT AND USE OF MULTIPLE AWARD SCHEDULES,
C. THE RECENT PROGRESS WHICH HAS BEEN MADE AND THE GOALS WE HAVE SET FOR THE NEXT 18 MONTHS.

A. THE ROLE AND RATIONALE OF FEDERAL SUPPLY SCHEDULES

GSA'S MISSION IS TO PURCHASE COMMON COMMERCIAL COMMODITIES FOR FEDERAL USERS. WE ARE A MANDATORY SOURCE OF SUPPLY FOR THE EXECUTIVE BRANCH -- BUT ONLY ON REQUEST BY THE LEGISLATIVE AND JUDICIAL BRANCHES, MEMBERS OF CONGRESS IN THEIR HOME OFFICES, AND VARIOUS GOVERNMENT CORPORATIONS.

WE UTILIZE 3 METHODS OF PURCHASE:

FIRST, THERE ARE 19000 STOCK ITEMS PURCHASED FOR OUR 17 DEPOTS AND 71 SELF-SERVICE STORES, AND ISSUED AGAINST REQUISITIONS FROM FEDERAL AGENCIES. THE DEPOTS AND STORES MAKE SALES OF ABOUT $860 MILLION ANNUALLY IN RESPONSE TO 9 MILLION CUSTOMER REQUISITIONS RECEIVED FROM 5200 BUYING POINTS. OUR OBJECTIVE IS TO SUPPORT THESE SALES WITH AVERAGE INVENTORIES OF ABOUT $234 MILLION, PRODUCING A TURNOVER IN EXCESS OF 3 TIMES ANNUALLY. OUR

FILL RATE OBJECTIVE IS 90 PERCENT. THESE PURCHASES ARE COMPETITIVE, BASED ON REQUIREMENTS COMPUTED FROM PAST SALES AND ANTICIPATED DEMAND.

THE SECOND TYPE OF PURCHASING IS FOR DIRECT DELIVERY TO AN AGENCY OF ITEMS BOUGHT IN DEFINITE QUANTITIES ON A COMPETITIVE BASIS. THESE PURCHASES ARE FOR VEHICLES, A VARIETY OF TOOLS, AND OTHER HIGH-VOLUME OR HIGH-UNIT COST ITEMS. THIS YEAR WE ESTIMATE THAT THERE WILL BE ABOUT $600 MILLION OF SUCH PURCHASES FOR INDIVIDUAL AGENCIES.

THE THIRD PURCHASE METHOD IS THE FEDERAL SUPPLY SCHEDULES. THESE SCHEDULES ARE AVAILABLE TO ALL FEDERAL USERS, REGARDLESS OF LOCATION, AND COVER ABOUT 4 MILLION ITEMS AND SEVERAL THOUSAND SUPPLIERS. FOR 126 COMMODITY SCHEDULES WE MAKE A SINGLE AWARD BASED ON COMPETITION AND FAIRLY FIRM REQUIREMENTS. SALES FROM THESE SINGLE AWARD SCHEDULES TO AGENCIES RUN AROUND $245 MILLION ANNUALLY.

THE SECOND TYPE OF SCHEDULE -- AND THAT WHICH WE ARE CONCERNED WITH IN THIS DISCUSSION -- ARE THE MULTIPLE AWARD SCHEDULES, OF WHICH THERE ARE SOME 113 AND FROM WHICH AGENCIES PURCHASE ABOUT $2.1 BILLION ANNUALLY. MULTIPLE AWARD SCHEDULES ARE NEGOTIATED ANNUALLY WITH ALL INTERESTED SUPPLIERS. ALL WHO ARE WILLING TO OFFER US AN "ACCEPTABLE" (BENCHMARK) DISCOUNT FROM THEIR LIST PRICES ARE LISTED ON THE SCHEDULE AND ELIGIBLE TO SELL DIRECTLY TO ANY GOVERNMENT USER. THE DEVELOPMENT OF MULTIPLE AWARD SCHEDULES IS A COMPLEX PROCESS. EXTENSIVE FACTUAL DATA ARE OBTAINED FROM OFFERORS, FOLLOWED BY INDIVIDUAL FACE-TO-FACE NEGOTIATIONS. IN CHOOSING SUPPLIERS TO BE PLACED ON SCHEDULE WE SELECT A BENCHMARK DISCOUNT BASED ON A STUDY OF THE DISCOUNTS OFFERED BY ALL BIDDERS AS WELL AS THEIR RANGE OF PRODUCTS, THEIR STANDING IN THE MARKET, THE DISCOUNTS THEY OFFER THEIR COMMERCIAL CUSTOMERS. IT MUST BE POINTED OUT THAT OVER THE YEARS THE PROGRAM HAS BEEN POPULAR WITH BOTH USERS AND SUPPLIERS BECAUSE IT IS A LOW COST WAY OF OFFERING EXTENSIVE VARIETIES TO USERS THROUGHOUT THE WORLD AT A DISCOUNT, AND AN ATTRACTIVE

WAY TO PRESENT MANUFACTURERS' COMPLETE LINES TO A WIDE GOVERNMENT AUDIENCE.

B. THE PROBLEMS REPORTED BY AUDITS OF MULTIPLE AWARD SCHEDULES

THERE HAVE BEEN AUDITS ALMOST EVERY YEAR SINCE 1971. THE CRITICISMS HAVE NOT BEEN DIRECTED AT THE SINGLE AWARD, COMPETITIVE SUPPLY SCHEDULES. THE MULTIPLE AWARD SCHEDULES HAVE BEEN CRITICIZED FOR THE FOLLOWING PRINCIPAL REASONS:

-- TOO MANY ITEMS ARE ON SCHEDULE, THUS DENYING THE GOVERNMENT THE ECONOMIES AVAILABLE FROM ITEM REDUCTION, SIMPLIFICATION AND STANDARDIZATION.

-- TOO MANY SUPPLIERS OF SIMILAR ITEMS.

-- INSUFFICIENT COMPETITION IN THE NEGOTIATION PROCESS.

-- LACK OF MONITORING OVER ORDERING BY AGENCIES.

-- FAILURE OF THE GOVERNMENT TO UTILIZE ITS PURCHASING VOLUME EFFICIENTLY TO OBTAIN THE BEST PRICES.

-- QUESTIONABLE ITEMS LISTED ON SCHEDULES.

IT MUST BE STRESSED THAT THESE ARE CRITICISMS OF GSA PRACTICES NOT OF INDUSTRY PRACTICES.

GSA IN COMMENTING ON THESE REPORTS HAS GENERALLY ACKNOWLEDGED THE CRITICISMS AND PROMISED CORRECTIVE ACTION. AN EXCELLENT GENERAL ACTION PLAN WAS, IN FACT, DEVELOPED IN APRIL 1979. THAT PLAN, HOWEVER, AND THE RECOMMENDATIONS IN THE AUDIT REPORTS OVER THE PAST 10 YEARS HAVE DEALT WITH STEPS THAT CANNOT EASILY BE IMPLEMENTED. THEY REQUIRE NEW KNOWLEDGE, NEW TECHNIQUES, AND NEW ATTITUDES ON THE PART OF GOVERNMENT PERSONNEL.

HENCE, OUR CURRENT APPROACH IS TO PUT EVERYONE OF THE 113 MULTIPLE AWARD SCHEDULES ON TRIAL, AND TO RETAIN ONLY THOSE SCHEDULES AND THOSE ITEMS THAT IT CAN BE PROVEN NECESSARY TO KEEP ON MULTIPLE AWARD SCHEDULE. OUR FIRST GOAL IN EACH CASE WILL BE TO OBTAIN FIRM QUANTITY REQUIREMENTS IF POSSIBLE AND MAKE COMPETITIVE AWARDS TO THE LOW RESPONSIVE, RESPONSIBLE BIDDER ON EACH ITEM. A CONCURRENT GOAL WILL BE TO DISCONTINUE FEDERAL SPECIFICATIONS WHEREVER POSSIBLE AND SUBSTITUTE COMMERCIAL ITEM DESCRIPTIONS (CID's).

WE HAVE NOW INAUGURATED FOUR BASIC IMPROVEMENTS TO ACHIEVE THESE GOALS. WE ARE DELIGHTED WITH OUR FIRST MONTH'S PROGRESS AS DISCUSSED BELOW.

IMPROVEMENT NO. 1 - FIX RESPONSIBILITY FOR ACQUISITION PLANNING

PERHAPS THE MOST IMPORTANT REASONS FOR OUR SLOW PROGRESS OVER PAST YEARS HAS BEEN THE LACK OF FULLY-FOCUSED RESPONSIBILITY FOR ACHIEVING RESULTS IN THIS AREA ON A FULL-TIME, CONTINUOUS BASIS.

THERE ARE NOW 8 SEPARATE SPECIALIST GROUPS THAT ARE INVOLVED IN THE ENTIRE CYCLE FROM PLANNING THROUGH EXECUTING PROCUREMENT STRATEGIES. THESE SPECIALISTS ARE IN REQUIREMENTS PLANNING, SPECIFICATION WRITING, CONTRACTING, QUALITY CONTROL, DISTRIBUTION, CUSTOMER LIAISON, MARKET RESEARCH, AND PROPERTY MANAGEMENT.

THUS WE HAVE FOUND THAT WE NEED ONE FULL-TIME SENIOR EXECUTIVE IN MY IMMEDIATE OFFICE, SUPPORTED BY A SMALL PERMANENT STAFF TO BE CONTINUOUSLY AUGMENTED WITH SPECIALISTS FROM THE 8 GROUPS TO WORK ON SPECIFIC COMMODITY PROJECTS. THIS OFFICIAL HAS BEEN APPOINTED AND DESIGNATED "DIRECTOR OF ACQUISITION PLANNING." HIS FINDINGS WILL BE IMPLEMENTED BY DIRECTIVES SIGNED BY THE COMMISSIONER, LARGELY ON A COMMODITY BY COMMODITY BASIS.

WHILE MULTIPLE AWARD SCHEDULES WILL BE THE INITIAL AREA OF INTEREST FOR THE DIRECTOR OF ACQUISITION PLANNING, HE WILL OVER TIME REVIEW ALL PLANNING AND PURCHASING PRACTICES IN ALL COMMODITY AREAS, TO INSURE THAT THE GOVERNMENT'S PURCHASING POWER IS BROUGHT TO BEAR EFFECTIVELY IN THE MARKET PLACE.

A SECOND MAJOR ORGANIZATIONAL INNOVATION WHICH RELATES TO IMPROVED ACQUISITION PLANS IS THE APPOINTMENT OF THE NEW "ASSISTANT COMMISSIONER FOR PROPERTY MANAGEMENT." THIS APPOINTMENT IS AN OUTGROWTH OF OUR EXPERIENCE WITH THE FURNITURE MANAGEMENT REFORM PLAN. ONE OF THE KEY RESPONSIBILITIES OF THIS OFFICIAL IS TO WORK DIRECTLY WITH COUNTERPARTS IN EACH OF THE FEDERAL AGENCIES (DESIGNATED PROPERTY MANAGEMENT

OFFICERS) ON THE BEST MEANS OF OBTAINING FUTURE REQUIREMENTS, ELIMINATING UNNECESSARY ITEMS, AND ACHIEVING THE MOST ECONOMIC DISTRIBUTION PRACTICES.

WITH THESE TWO NEW LEADERSHIP ELEMENTS NOW IN PLACE WE HAVE BEGUN TO OVERCOME MANY OF THE WEAKNESSES WHICH THE AUDITORS HAVE FREQUENTLY REVEALED IN THE PAST. WE WILL ALSO BE FAR BETTER PREPARED TO COOPERATE WITH THE OFFICE OF FEDERAL PROCUREMENT POLICY IN RESPECT TO THE COMMERCIAL PRODUCTS AREA.

ONE OF THE EARLY NEW INITIATIVES OF THE DIRECTOR OF ACQUISITION PLANNING WILL BE TO RESPOND TO GAO'S RECOMMENDATION FOR IMPROVED TRAINING OF CONTRACTING PERSONNEL IN THE USE OF INDUSTRY AND CONSUMER INFORMATION AS PART OF THE NEGOTIATION PROCESS.

ANOTHER OF THE NEW INITIATIVES OF THE DIRECTOR OF ACQUISITION PLANNING IS THE SYSTEMATIC EXPOSURE OF OTHER INFORMATION SOURCES TO ASSIST THOSE INVOLVED IN THE ACQUISITION PROCESS. THE MOST IMPORTANT OF THESE IN THE NEAR-TERM WILL BE THE EXPANDED SUPPORT OF THE GSA AUDIT ORGANIZATION, BOTH ON PRE-AWARD AND POSTAWARD AUDITS. WE ARE DELIGHTED TO LEARN THAT SOME 21 AUDITS ARE NOW IN PROCESS AND ANOTHER 27 ARE FIRMLY SCHEDULED. THE DIRECTOR OF ACQUISITION PLANNING WILL SEE THAT THEY REACH THE PROPER PARTIES FOR IMMEDIATE USE.

ANOTHER SOURCE OF NEW INTELLIGENCE WHICH WE HAVE LONG NEEDED IS THAT OF TAPPING THE EXPERIENCE OF STATE AND LOCAL GOVERNMENT PURCHASING ORGANIZATIONS. A SYSTEMATIC DIALOGUE WITH SELECTED GROUPS HAS NOW BEEN INITIATED.

WE ALSO NEED TO WORK IN MUCH CLOSER COMMUNICATION WITH ASSOCIATIONS WHO CAN ASSIST US TO UNDERSTAND INDUSTRY PRACTICES AND PROBLEMS.

IMPROVEMENT NO. 2 - MAKE OVERDUE CHANGES IN PRICING POLICIES AND PRACTICES

WE HAVE MOVED VIGOROUSLY TO IMPROVE SEVERAL PRACTICES TOUCHED ON IN AUDIT REPORTS:

> FIRST, AGENCIES HAVE BEEN REQUESTED TO CONDUCT COMPARISON SHOPPING. A NEW REGULATION TO BE EFFECTIVE MAY 1, 1980, STATES THAT "AGENCIES SHALL PERIODICALLY COMPARE PRICES QUOTED IN FEDERAL SUPPLY SCHEDULES WITH FULLY SUITABLE ITEMS AVAILABLE FROM LOCALLY AVAILABLE SOURCES. WHEN LOWER PRICES ARE ENCOUNTERED, THIS INFORMATION SHALL IMMEDIATELY BE BROUGHT TO THE ATTENTION OF THE COMMISSIONER, FEDERAL SUPPLY SERVICE WITH FULL DOCUMENTATION."
>
> WE HAVE IN THE PAST ALLOWED AGENCIES TO BUY AT LOWER PRICES FOR IDENTICAL ITEMS BUT WE HAVE NOT ENCOURAGED THEM (AS WE WILL NOW DO) TO CONSTANTLY BE ALERT TO THE AVAILABILITY OF SUITABLE ITEMS AT CHEAPER PRICES SO THAT WE CAN FIND WAYS TO MAKE THEM AVAILABLE IN FUTURE SCHEDULES.
>
> SECOND, OUR BUYERS WILL STRESS NET PRICES. THIS HAS BEEN A FREQUENT CRITICISM BECAUSE OUR NEGOTIATIONS HAVE BEEN BASED ON OBTAINING A PERCENTAGE DISCOUNT FROM PUBLISHED LIST PRICES RATHER THAN THE LOWEST NET PRICE FOR SUITABLE ITEMS. BOTH FACTORS NEED ATTENTION. WE HAVE ISSUED INSTRUCTIONS REQUIRING THAT FOR IDENTICAL OR SIMILAR PRODUCTS SINGLE AWARDS SHOULD BE MADE BASED ON LOWEST NET PRICE, IN LIEU OF MULTIPLE AWARDS. IN CASES WHERE MULTIPLE AWARDS ARE CONTINUED, SUPPLIERS OFFERING THE LOWEST NET PRICE WILL BE INCLUDED ON THE SCHEDULE EVEN THOUGH THE BIDDER DOES NOT OFFER AS LARGE A PERCENTAGE DISCOUNT FROM HIS PUBLISHED PRICELIST AS CALLED FOR UNDER THE BENCHMARK.
>
> THIRD, REDUCTION IN MAXIMUM ORDER LIMITATIONS (MOL'S). IN THE PAST THE MAXIMUM ORDER LIMITS HAVE BEEN SET SO HIGH AS TO RENDER THE PLACEMENT OF SEPARATE COMPETITIVE PURCHASES VERY INFREQUENT. IN FACT, A RECENT SURVEY OF AGENCY PURCHASES FROM 100 MULTIPLE AWARD SCHEDULES REVEALED ONLY 19 INSTANCES OF A SEPARATE QUANTITY PURCHASE BECAUSE THE MOL WAS EXCEEDED. AN ILLUSTRATION OF THE UNREALISTICALLY HIGH MAXIMUMS TODAY IS RUBBER STAMPS, WHERE THE LIMITATION IS SET AT BETWEEN $15 AND $35 THOUSAND. THE LIMITATION ON DICTIONARIES AND ENCYCLOPEDIAS HAS BEEN SET AT $15 TO $20 THOUSAND, ETC. WE ARE ISSUING INSTRUCTIONS TO OUR SCHEDULE BUYERS THAT IN THE FUTURE THEY MUST SEEK TO CUT THESE UNREALISTICALLY HIGH LIMITS VERY SUBSTANTIALLY, AND TO JUSTIFY THE LIMITS THAT ARE ESTABLISHED ON A CASE-BY-CASE BASIS.
>
> FOURTH, VIGOROUS ENFORCEMENT OF AGGREGATE DISCOUNTS AND OTHER GOVERNMENT ENTITLEMENTS TO REFUNDS. THE AUDITORS CONTINUOUSLY TURN UP FINDINGS WHICH NEED OUR CLOSE ATTENTION:
>
> -- SUPPLIER GRANTED REDUCTIONS TO COMMERCIAL CUSTOMERS BUT FAILED TO MAKE AN EQUIVALENT REDUCTION TO FEDERAL AGENCIES.
>
> -- INCREASED DEALER DISCOUNTS NOT PASSED ON TO FEDERAL AGENCIES.
>
> -- DISCOUNTS OFFERED BY THE CONTRACTOR AND ACCEPTED BY GSA NOT GIVEN TO FEDERAL AGENCIES.

-- INACCURATE CERTIFICATION OF ESTABLISHED CATALOG OR MARKET PRICELIST.

-- FAILURE TO DISCLOSE COST REDUCTIONS GRANTED TO COMMERCIAL CUSTOMERS.

-- INACCURATE AND INCOMPLETE RETAIL CUSTOMER DISCOUNT DATA.

FIFTH, MORE IMAGINATIVE USE OF BLANKET PURCHASING AGREEMENTS (BPA'S) BY FEDERAL AGENCIES. A MEMORANDUM IS BEING SENT TO AGENCY PROPERTY MANAGEMENT OFFICERS CALLING THEIR ATTENTION TO THE PROVISION IN MULTIPLE AWARD SCHEDULES WHICH ENCOURAGES AGENCIES TO MAKE A SPECIAL ARRANGEMENT WITH SUPPLIERS FOR BETTER DISCOUNTS WHEN QUANTITITES TO BE PURCHASED JUSTIFY THIS. WE HAVE ASKED THE AGENCIES TO SEEK OUT SUCH OPPORTUNITIES AND ESTABLISH BPA'S. WE WILL ATTEMPT TO MONITOR PERFORMANCE IN THIS REGARD.

SIXTH, REJECTION OF LATE PROPOSALS. GAO HAS CRITICIZED OUR FAILURE TO ESTABLISH FIRM CUTOFF DATES FOR RECEIPT OF OFFERS. TO CURE THIS PROBLEM WE ISSUED LAST FALL INSTRUCTIONS TO ALL OF OUR BUYERS THAT FIRM CUTOFF DATES MUST BE ESTABLISHED. THIS REVISION HAS BECOME WIDELY EFFECTIVE SINCE THEN.

SEVENTH, REDUCTION IN MARKETING CATEGORIES FOR PURPOSES OF PRICE AND DISCOUNT COMPARISONS. GAO HAS FELT THAT WE SHOULD AIM TOWARD THE FULL ELIMINATION OF THE CATEGORIES. WE HAVE NOT YET FOUND A SUBSTITUTE FOR THIS TECHNIQUE THOUGH WE HAVE COMMITTED OURSELVES TO A POLICY OF STRESSING CATEGORIES OF SUPPLIERS WHICH SELL DIRECT TO THE GOVERNMENT FROM THE MANUFACTURER RATHER THAN THROUGH MIDDLEMEN WHEN EXTRA COSTS CAN BE AVOIDED. WE MUST, HOWEVER, TAKE INTO ACCOUNT THE VALUE OF NATIONAL DISTRIBUTION CHANNELS, PARTICULARLY ON ITEMS OBTAINED THROUGH LOCAL OUTLETS WHICH STOCK A LARGE VARIETY OF NEEDED ITEMS, SUCH AS SPARE PARTS.

IMPROVEMENT NO. 3 - STRESS ITEM REDUCTION AS A FRUITFUL SOURCE OF SAVINGS.

THE PROLIFERATION OF ITEMS ON SCHEDULE HAS BEEN ONE OF THE MOST FREQUENTLY CRITICIZED SOURCES OF WASTE. WE SHARE THIS CONCERN AND ARE TAKING A SERIES OF STEPS TO DEAL WITH THE MATTER.

FIRST, WE ISSUED IN DECEMBER AN INITIAL DIRECTIVE RESPONDING TO GAO'S RECOMMENDATION THAT SPECIAL ITEM NUMBERS BE DROPPED FROM MULTIPLE AWARD SCHEDULES WHERE SALES DO NOT AMOUNT TO $10,000 OR MORE. THIS IS NOW BEING INCORPORATED IN THE PERMANENT PROCUREMENT REGULATIONS. WE HAVE EXAMINED A NUMBER OF SCHEDULES AND REDUCTIONS ON THE ORDER OF 10 PERCENT TO 20 PERCENT OF THE ITEMS LISTED APPEAR POSSIBLE.

SECOND, WE ARE REMOVING UNNECESSARY ITEMS FROM MULTIPLE AWARD SCHEDULES. AS PREVIOUSLY REPORTED TO THE STAFF WE HAVE MADE SUBSTANTIAL HEADWAY IN THE PAST YEAR IN REMOVING ITEMS SUBJECT TO ABUSE AND PILFERAGE SUCH AS HANDHELD CALCULATORS, HOME-TYPE TV SETS, SAILBOATS, PEDALBOATS, SAUNA BATHS, PARTY DECORATIONS AND NOVELTIES, MOTORCYCLES, TRAIL BIKES, 2-WHEEL UTILITY VEHICLES, GOLF CARTS, TRAVEL TRAILERS, AMUSEMENT DEVICES, TROPHIES AND AWARDS.

THIRD, WE HAVE CLASSIFIED A NUMBER OF ITEMS FOR RESTRICTED USE ONLY, LIMITING AGENCIES AUTHORIZED TO ORDER AGAINST SUCH SCHEDULES. THESE INCLUDE SMALL CRAFT, MARINE EQUIPMENT, BINOCULARS, SELF-DEVELOPING AND INSTAMATIC FILM, CAMERAS, EQUIPMENT AND PROJECTORS, REPRODUCTION FURNITURE, GAMES AND TOYS.

FOURTH, ON APRIL 29 WE INTENSIFIED THE ABOVE EFFORTS BY ISSUING A MEMORANDUM TO THE NEWLY-APPOINTED AGENCY PROPERTY MANAGEMENT OFFICERS REQUESTING THEM TO REVIEW OTHER ITEMS WHICH MAY WARRANT RESTRICTIONS, INCLUDING: CHAINSAWS, LAWN AND GARDEN EQUIPMENT, MAINTENANCE AND REPAIR SHOP EQUIPMENT, METRIC TOOLS, SMOKE DETECTORS, HOTEL AND SOFA BEDS, ARTIFICIAL PLANTS, WALL ART, URNS, MUSICAL INSTRUMENTS AND AMPLIFIERS, RECREATION AND ATHLETIC EQUIPMENT AND WOMEN'S APPAREL.

STILL ANOTHER AREA WHICH HAS ATTRACTED OUR ATTENTION ARE SIMILAR ITEMS CARRIED BOTH IN DEPOT STOCKS AND ON MULTIPLE AWARD SCHEDULES. THIS HAS CAUSED US TO DISCONTINUE OR SUSPEND MULTIPLE AWARD SCHEDULES FOR SUCH OFFICE AND HOUSEHOLD FURNITURE ITEMS WHILE WE EXAMINE WHY SUCH SCHEDULES WERE ESTABLISHED AND ASCERTAIN WHETHER THEY CANNOT BE SUPERSEDED BY REGULAR STOCK ITEMS. THE SCHEDULES AFFECTED ARE REPRODUCTION FURNITURE, EXECUTIVE FURNITURE, MODERN (WOOD AND METAL), CONFERENCE ROOM TABLES, ACOUSTICAL PARTITIONS, CONFERENCE ROOM SEATING, AND SYSTEMS FURNITURE (PLACED ON HOLD). OVER 3500 MODELS OR STOCK NUMBERS ARE INVOLVED.

THE ABOVE STEPS ARE PRIMARILY CLEAN UP ACTIONS TO PURIFY EXISTING SCHEDULES. THE HIGHEST PAYOFF WILL COME FROM THE FINAL IMPROVEMENT ACTIONS DISCUSSED BELOW.

IMPROVEMENT NO. 4 - CONVERT TO COMPETITIVE PROCUREMENT, AS FULLY AS POSSIBLE COMMODITIES NOW ON MULTIPLE AWARD SCHEDULES.

OUR GOAL BY FY 1981 IS TO HAVE IN PLACE REVISED PROCUREMENT STRATEGIES FOR ALL HIGH-VOLUME MULTIPLE AWARD SCHEDULES WHICH CAN BE CONVERTED TO COMPETITIVE AWARDS. OUR INITIAL GOAL IS TO REDUCE PRICES TO GOVERNMENT USERS THROUGH SOUND COMPETITION BY AT LEAST $100 MILLION. IN THE YEARS BEYOND WE EXPECT TO SUBSTANTIALLY INCREASE THOSE SAVINGS.

WE HAVE MADE SUBSTANTIAL HEADWAY DURING THE PAST FEW WEEKS ON 11 COMMODITY GROUPS CHOSEN BECAUSE OF THEIR POTENTIAL FOR NEAR-TERM SAVINGS. THESE ITEMS ARE LISTED BELOW AND THREE ARE THEN DISCUSSED IN SOME DETAIL.

Initial Schedules Chosen for Development of Revised Procurement Strategy

(1) Electronic Calculators

(2) Conference Room Furniture

(3) Chemical Products: Sanitizers, Disinfectants, and Detergent Cleaners

(4) Film

(5) Lamps

(6) Overhead Projectors

(7) Systems Furniture

(8) Electric Typewriters

(9) Vehicle Parts

(10) Wall Units

(11) Xerographic Paper

In each case we are preparing a systematic analysis of the items covered, sales information by vendor to the extent available, reason for product varieties if known, proposals for product line revisions, principal users, best estimates of requirements, and finally revised acquisition plans which specify (1) what items shall be purchased, (2) what specifications shall be used, and (3) what quantities can be justified.

To illustrate the approach three projects are described below: calculators, typewriters, and xerographic paper.

Electronic Calculators

THIS IS A CLASSIC ILLUSTRATION OF THE PROLIFERATION WHICH CAN OCCUR IN A STANDARD COMMERCIAL ITEM UNDER THE MULTIPLE AWARD APPROACH.

TODAY, WE HAVE 20 CONTRACTORS OFFERING A TOTAL OF 208 MODELS ON SCHEDULE. FEDERAL BUYERS PROCURE ABOUT $18 MILLION ANNUALLY OF SUCH EQUIPMENT. THESE ITEMS ARE WIDELY USED IN MOST FEDERAL AGENCIES.

USERS OF OUR SCHEDULES ARE PROVIDED DATA SHEETS WHICH SHOW FOR EACH MANUFACTURER AND MODEL THE PRINCIPAL CHARACTERISTICS OF THE EQUIPMENT AND THE GOVERNMENT NET PRICE. WITH 208 MODELS AVAILABLE, HOWEVER, IT IS A COMPLEX TASK TO MAKE A SELECTION, PARTICULARLY WHEN PRICES VARY FROM LESS THAN $50 PER ITEM TO OVER $1200.

THE FSS ACQUISITION PLANNING TEAM HAS ASSEMBLED EXTENSIVE DATA ON THE SALES TO THE GOVERNMENT BY MODEL. WORKING WITH MAJOR GOVERNMENT USERS THEY HAVE DEVELOPED PROPOSED COMMERCIAL ITEM DESCRIPTIONS (CID'S) COVERING THREE DESK TOP MACHINES (1) ONE WHICH WILL DISPLAY FIGURES ONLY, (2) ANOTHER WHICH WILL PRINT FIGURES, AND (3) ONE WHICH WILL BOTH DISPLAY AND PRINT. THESE ARE THE MOST POPULAR ITEMS AND MODELS. BY SELECTING THIS APPROACH, WE EXPECT TO CUT THE NUMBER OF MODELS OFFERED FROM 178 TO 6. WE ESTIMATE WE WILL BE CONDUCTING COMPETITIVE BID COMPETITIONS AROUND THESE CID'S FOR AN ANNUAL REQUIREMENT OF APPROXIMATELY 35,000 UNITS OF EQUIPMENT.

OUR ONGOING TEST PROCUREMENTS WILL INCLUDE WORK WITH THE INTERNAL REVENUE SERVICE WHICH IS A MAJOR USER OF THIS TYPE OF EQUIPMENT.

A DRAMATIC SUCCESS STORY OF THE VALUE OF COMPETITION LIES IN A DEFINITE QUANTITY BUY MADE FOR THE BUREAU OF CENSUS TO OBTAIN A SIMPLE BATTERY OPERATED CALCULATOR FOR USE IN THE CONDUCT OF THE 1980 CENSUS. SINCE THIS WAS A TEMPORARY SURGE REQUIREMENT, IT DID NOT JUSTIFY THE HEAVY DUTY OR MORE ELABORATE EQUIPMENT. BIDS WERE REQUESTED COVERING 6700 UNITS. 14 BIDS WERE RECEIVED RANGING FROM $18.09 TO $52.00 PER UNIT. THE WINNING BIDDER'S PRICE SAVED $80,000 BELOW THE COMMERCIAL PRICE. THE UNIT PURCHASED, WHILE NOT ON THE CURRENT FEDERAL SUPPLY SCHEDULE, IS VERY SIMILAR TO OTHER MODELS THAT ARE ON THAT SCHEDULE.

ELECTRIC TYPEWRITERS

THIS IS A COMMODITY INVOLVING $50 MILLION IN ANNUAL PURCHASES. SEVEN CONTRACTORS NOW PARTICIPATE AND 82 MODELS ARE AVAILABLE ON SCHEDULE. ONE CONTRACTOR ENJOYS 75 PERCENT OF THESE PURCHASES. GOVERNMENT SALES REPRESENT ABOUT 10 PERCENT OF THE TOTAL MARKET. TWO MAJOR PROJECTS ARE WELL ADVANCED:

FIRST, IS A TEST PROCUREMENT BASED ON A LIFE CYCLE COST COMPETITION AMONG FIVE BIDDERS. THE MODELS SUBMITTED ARE JUST COMPLETING A SIMULATED 7 YEAR USAGE TEST (MECHANCIALLY CONDUCTED IN THE GSA TEST LAB.) A FULL COST HISTORY OF MAINTENANCE AND SUPPLY COSTS DURING THIS SIMULATED LIFE CYCLE IS BEING MAINTAINED. AN AWARD WILL BE MADE OF 350 MACHINES TO THE LOW BIDDER BASED ON LIFE CYCLE PURCHASE AND MAINTENANCE COSTS. AIR FORCE AND SOCIAL SECURITY ADMINISTRATION ARE COOPERATING IN THIS TEST. THE OUTCOME CAN BE AN IMPORTANT FACTOR IN FUTURE COMPETITIONS.

SECOND, TWO CID'S HAVE BEEN DEVELOPED -- ONE FOR A SINGLE ELEMENT TYPEWRITER AND ONE FOR A TYPEBAR MACHINE. WE PLAN TO CONDUCT A COMPETITIVE PROCUREMENT USING THESE CID'S, POSSIBLY ON A ZONAL BASIS. A KEY CONSIDERATION WILL BE THE THE AVAILABILITY OF FULL MAINTENANCE SERVICE FOR THE BRAND SELECTED.

BACKING UP THIS PROJECT IS THE MOST EXTENSIVE USER SURVEY EVER UNDERTAKEN BY GSA FOR ANY COMMODITY. A SCIENTIFICALLY DESIGNED QUESTIONNAIRE COVERING THE TWO CID MACHINES HAS BEEN WIDELY CIRCULATED TO THE AGENCIES AND THE RESULTS WILL BE AVAILABLE

BY THE END OF MAY. FROM THIS, FINAL DATA FOR THE COMPETITION WILL BE GLEANED.

ALSO OF SPECIAL INTEREST IS THE INDICATION THAT SOME LARGE AGENCIES ARE SHOWING STRONG INTEREST IN STANDARDIZING ON A MINIMUM RANGE OF MODELS. THIS MIGHT BE A MAJOR MILESTONE IN REDUCING THE VARIETIES OF ITEMS PURCHASED BY FEDERAL AGENCIES AND SET A PRECEDENT FOR OTHER COMMODITY CATEGORIES.

XEROGRAPHIC PAPER

THIS IS ONE OF THE MOST UNIVERSALLY USED ITEMS, AND IS SUBJECT TO WIDELY VARYING ORDERING HABITS AND NEEDS OF INDIVIDUAL AGENCIES. IT HAS BEEN THOUGHT IN THE PAST THAT THE SIMPLEST ARRANGEMENT WOULD BE TO MAKE THE ITEM AVAILABLE ON SUPPLY SCHEDULE IN VARIOUS DISCOUNT QUANTITY BRACKETS. WE HAVE DISCOVERED THAT THIS APPROACH DENIES THE GOVERNMENT OF THE ABILITY TO USE ITS BUYING POWER FULLY -- A FACTOR WHICH MAY BE SIGNIFICANT IN VIEW OF THE $38 MILLION OF ANNUAL PURCHASES, 70% IN THE STANDARD LETTER AND LEGAL SIZES. 15 CONTRACTORS ARE NOW SUPPLYING THIS ITEM.

TO ESTABLISH A REQUIREMENTS BASIS WE HAVE BEEN ENGAGED IN FIELD SURVEYS IN EACH OF OUR REGIONS, CONTACTING AGENCIES TO ASCERTAIN THEIR MONTHLY USAGE. ILLUSTRATIONS OF OUR FINDINGS ARE AS FOLLOWS:

-- A SURVEY OF PRINTING PLANTS IN THE CITY OF DENVER, COLORADO SHOWS THAT 1737 CARTONS AT A MINIMUM ARE CONSUMED BY THESE FACILITIES MONTHLY. THIS EQUATES TO 2 TRUCKLOADS. WE CONCLUDE FROM THESE DATA THAT THE REQUIREMENTS FOR THE CITY OF DENVER CAN BE AGGREGATED FOR 1 YEAR AND THAT A DEFINITE QUANTITY PROCUREMENT WITH PHASED DELIVERIES THROUGHOUT THE YEAR WILL RESULT IN A COMBINATION OF BEST PRICE AND BEST DELIVERY FOR THIS ITEM. OUR CONTRACTING OFFICE IS PURSUING THIS TYPE OF STUDY IN EACH MAJOR CITY.

-- ANOTHER INTERESTING SET OF FINDINGS RESULTED FROM CONTACTS WITH MILITARY BASES IN OKLAHOMA AND TEXAS. WE FOUND THAT RANDOLPH AIR FORCE BASED USES 5580 REAMS A MONTH, TINKER AIR FORCE BASE USED 2583 REAMS A MONTH, AND FORT SILL, OKLAHOMA 5000 REAMS PER MONTH. IN THAT REGION WE PLAN TO AGGREGATE REQUIREMENTS FOR THESE INSTALLATIONS (AND FOR OTHERS) FOR 1 YEAR AND COVER THEM WITH A DEFINITE QUANTITY PROCUREMENT, PHASED DELIVERY CONTRACT.

A CID IS BEING DEVELOPED SPECIFYING PERFORMANCE ON A RANGE OF COPYING EQUIPMENT MODELS. THIS WILL BE USED IN THE NEAR FUTURE IN A COMPETITIVE BID SCHEDULES CONTRACT WHICH WILL BE EFFECTIVE FOR A 6-MONTH PERIOD. OUR PLAN IS TO OBTAIN COMPETITIVE PRICING FOR THREE QUANTITY RANGES IN EACH OF SEVERAL ZONES.

A MAXIMUM ORDER LIMITATION OF 800 CARTONS (1 TRUCKLOAD) WILL BE USED SO THAT ANY BUYER WITH A LARGER REQUIREMENT MUST REQUEST GSA TO MAKE A DEFINITE QUANTITY CONTRACT.

WE LOOK FORWARD TO WORKING WITH THE PAPER INDUSTRY IN OUR EFFORT TO DEVELOP THE MOST EFFECTIVE ACQUISITION STRATEGY RESULTING FROM MORE SYSTEMATIC REQUIREMENTS PLANNING.

SUBSTITUTION OF CID'S FOR SPECIAL ITEMS ON SCHEDULE

IN ADDITION TO THE ABOVE 11 PROJECTS WHICH INVOLVE ENTIRE COMMODITY GROUPS, WE HAVE DEVELOPED A GROUP OF 56 CID'S TO BE USED IN PURCHASING SPECIAL ITEM NUMBERS (SIN'S) NOW INCLUDED ON VARIOUS MULTIPLE AWARD SCHEDULES. ON APRIL 3, 1980, WE CANCELLED THESE SIN'S FROM CURRENT SCHEDULES AND ISSUED INSTRUCTIONS TO BEGIN PREPARATION FOR COMPETITIVE PROCUREMENTS FOR THE FOLLOWING:

- OVERSHOE BOOTS
- RUBBER GLOVES
- DESK TRAYS
- TYPEWRITER RIBBONS
- WASTE RECEPTACLES
- BATTERY CHARGERS
- OUTBOARD MOTORS
- BICYCLES
- TRICYCLES (INDUSTRIAL)
- SMOKE DETECTORS
- LEAD HOLDERS (DRAFTSMAN)

ONE OF THE MOST INTERESTING ITEMS IN THE ABOVE GROUP ARE DESK TRAYS. CURRENTLY THERE ARE 144 TRAYS ON SCHEDULE INCLUDING

9 COLOR VARIATIONS, AND AT PRICES RANGING FROM $1.35 TO $25.34. THREE CID'S WILL TAKE THEIR PLACE AVAILABLE ONLY IN BLACK AND BEIGE.

CONCLUSION

WE WILL BE PLEASED TO FURNISH FOR THE RECORD FACT SHEETS OUTLINING THE STATUS OF THE ABOVE AND OTHER ONGOING PROJECTS. OUR GOAL WILL BE TO KEEP ADDING NEW PROJECTS AS EACH ONE IS BROUGHT TO A CONCLUSION, AND WE WILL BE HAPPY TO KEEP THE COMMITTEE INFORMED IN ANYWAY IT WISHES OF RESULTS PRODUCED IN THE FUTURE.

THIS CONCLUDES OUR STATEMENT MR. CHAIRMAN. WE WILL NOW BE PLEASED TO ANSWER YOUR QUESTIONS.

MULTIPLE AWARDS

Senator CHILES. I will have to say, Mr. Morris, that is the most hopeful information I have heard on this subject since we have gone into the GSA investigation. I will have to say I have some concerns because we have heard hopeful things before and nothing has resulted from them.

I take really no issue with most of the things that you have said in the statement and most of the directions that you are talking about making. I think that they are directions which you need to go.

I am a little concerned about those 200 people, though. Those 200 people outlived everybody else and I am sure they know they are going to outlive you and me and the Admiral. And, generally speaking, it is going to be done in a way, as far as their direction, that they are going to continue to do it the way they have done it. How are we going to move those 200 people?

Admiral FREEMAN. I will move them, Senator, if they get in the way. This program is going to go. It has my personal attention.

I certainly concur in Tom's statement that we have no objection at all to a quarterly report. I am asking for that. The question I have asked Tom is why do we have to buy anything by multiple schedules? That is what I am looking at.

I intend to see, as Tom does, positive improvements. If we have people who don't understand the problem, we will change the mix and get those who do understand the problem.

Senator CHILES. Let me say I liked what you said, Mr. Morris, about saying that there probably is going to be the necessity for different ways to buy different items.

Mr. MORRIS. Yes, sir.

Senator CHILES. I find that one of the greatest concerns that I have heard from suppliers is their fear that we are going to lock into some one way of doing something that is not going to allow them to compete or not going to give them a chance at the market. I think what we are looking for is not a No. 1, an only inclusive, magic way to do this, but we are looking at a way to maximize competition to provide the best product for the Government at the lowest price.

Mr. MORRIS. Absolutely.

Senator CHILES. If that takes a number of ways, including a multiple awards schedule for some items, that is all right, too. Like the Admiral, I think I want it proved to me there is a necessity for those items to be on multiple awards.

Mr. MORRIS. Knowing the market I think is one of the strategies we have failed on most miserably.

Senator CHILES. I think so.

Mr. MORRIS. We have to be expert on the market.

Senator CHILES. I think you definitely do to supply. Certainly to be able to take advantage of the quantity purchases that you are talking about from the base would be tremendously important.

My first feeling was that your goal of $100 million is a little low. I see you are talking about phasing in on that over 18 months. I would hope that even over that period of time you would get more savings. But that would bring you up to half of the procured items. If you have 20 percent savings on half, you get $200 million. But, of course, that would be assuming you got that over 1 year's period of time. And as you phase in, you may not get that.

We would like to see milestone reports on what your savings are. We would be very interested in seeing what the xerographic bids are and what you get on that.

Your statement referred to several actions that you are planning to get items off the schedule, such as raising the minimum sales floor and reducing the maximum order limitation. You also stated that every 1 of the 113 multiple awards schedules is on trial and that you will retain only those items that can be proven necessary to keep on multiple awards schedules.

My understanding is that GAO has told us you had not developed the criteria to judge whether an item should be on a multiple award schedule or not. Mr. Hall tells me you have now developed that in the last 2 days since we prepared these questions. Is that correct?

Mr. MORRIS. Sir, we like the philosophy that Admiral Freeman has enunciated. We are not assuming anything needs to be on schedule until it is put on trial. We want to get the facts we outlined and then make the right decision case by case, and we will go competitive if at all possible.

Senator CHILES. Senator Bumpers, we are delighted to have you here this morning. As we go along, please just jump right in.

Senator BUMPERS. I have no questions.

COMPETITIVE COMMERCIAL DISTRIBUTION AWARD

Senator CHILES. You mentioned that sales from single award schedules to agencies run around $245 million annually.

Mr. MORRIS. Yes, sir.

Senator CHILES. Under this method of procurement, a single contract is awarded to the lowest responsible bidder for a specified delivery area, and the procurement is formally advertised and the specification or product description is used. This procurement method seems to avoid the warehousing problem and insures that competition that is so lacking in the multiple awards schedule.

Why aren't we shifting more items from the multiple awards schedule to the single award program?

Mr. MORRIS. We will be doing so, sir. I would really like to give it a better name. We decided yesterday we ought to call it the "competitive commercial distribution award," because the goal is just what you outlined, to make it a competitive award but to help the manufacturer through better planning on our part to know when to be prepared and to be ready to ship on, say, 20 days' notice against our needs. We think in furniture particularly we ought to work on this in the future.

Admiral FREEMAN. Coupled with Mr. Morris' comments is the analysis of why the number of warehouses, why the level of inventories, and can we shift some of this within the pricing area where manufacturers will drop ship and therefore avoid the cost of warehousing in some areas. This relates to the overall program.

Senator CHILES. Certainly knowing the number of items that we are going to purchase or within a range of purchase of certain standard items, there would be no reason the Government would have to warehouse those items for periods of time. That is again how they get lost, by staying in those warehouses, I think. If we could drop ship and use them as our needs dictate, that would certainly be a savings.

I take it it is the need to develop the product descriptions that would slow you down.

Mr. MORRIS. Sir, that is one of the three key things—one, knowing the market; two, getting the requirements tacked down by locality and agency; and three, then preparing the description. We must have all three to do an adequate job.

I think we have an excellent staff of technical people that are now turning out these CID's. We completed about 500 already, 400 in areas other than multiple awards. But the goal is going to be at least twice that this year.

Senator CHILES. Why can't we rely on the national industry standards as product descriptions? Why do we have to develop them all ourselves?

Mr. MORRIS. I think we will to a very large degree do that. The CID will really be a reference document in many cases to industry standards.

DISCOUNTS

Senator CHILES. Your statement referred to the frequent criticism that GSA has received for the use of the so-called benchmark discount techniques. Under that benchmark discount GSA gets a certain discount off of list price for an item. Then any qualified supplier who meets that discount rate gets on the schedule no matter what his actual price is.

GSA found in some cases that the benchmark discount chosen was less than the highest discount being offered, even though the discount is supposed to be the best discount that the supplier gives.

What would you be doing in the future to verify that you are getting the best discount possible?

Mr. MORRIS. As I mentioned in my summary and the prepared statement, we are going to give first attention to net pricing whenever we can. If it is possible to make the award on net pricing, we will do that. Discounting has been used in the past where it has been necessary to group offerers or vendors into various categories, such as manufacturers selling to us direct, and such as manufacturers selling through dealers or such as dealers only selling to us. Out of all offerers in each category, we select what appears to be the threshold or benchmark discount that should be met by any successful contractor before we will negotiate with him. It is a threshold and not a maximum discount.

At that point our contract personnel sit down with those willing to meet the threshold benchmark discount and negotiate with them, attempting to get a better discount, which they often do.

It is true there have been cases where the lowest discount hasn't been accepted. From my point of view that is not an acceptable practice. I will require that we review any such case before it is permitted in the future.

Senator CHILES. I certainly agree with you that the net price is a much better way. I would rather feel like we are dealing with a lower net price than think we are getting some big discount and in fact the price is jacked up to start with.

What are your thoughts on requiring a certified price submission or certification that we are getting the best discount?

Mr. MORRIS. We do get I think very good submissions now, they are quite elaborate, where we ask for offerers to give us their price list, the discounts they offer to various kinds of buyers, and how they compare with what they are offering us.

The thing we lack is the ability to go in and test the data they give us to be sure it is clear, accurate, and complete.

Senator CHILES. I think we found at our last hearing that we could go downtown and get discounts lower on an individual purchase of calculators or typewriters than the GSA was given of what was supposed to be the low discount. So I think if there is no penalty or no check, then it is very easy to say that you are giving the lowest discount, whether you are or not.

Mr. MORRIS. As I mentioned, sir, we are now alerting all of our buyers as well as our customers to constantly be on the lookout for just such situations you cite.

Senator CHILES. I agree your customers could be your best policemen in that because of the competition. But it would seem to me if someone knowingly or deliberately misled you in the discount, the fact that he may be penalized by being taken off of the bid list or something for a period of time would be a strong incentive to see that he is going to give you correct information.

Senator BUMPERS. Mr. Chairman, could I interject myself for a moment?

Senator CHILES. Yes, sir.

COMMERCIAL STANDARDS

Senator BUMPERS. You asked a question a while ago "Why don't we use the industry criteria rather than writing our own on some bids?"

I was curious because when I was Governor we got into a lot of problems with that. When IBM was the successful bidder, our purchasing department was always accused of writing the specs so virtually no one but IBM could qualify. We always had trouble with that. How do you deal with that? I assume you get accused of that, do you not?

Admiral FREEMAN. Yes, sir. But if you write the commercial item descriptions properly, they are broad enough to cover the commercial standard. I think that is the point the Senator made. There are commercial standards, particularly in the furniture area and other commodities. In more complex commodities, I would agree you have a problem.

Senator BUMPERS. Let's take computers, for example.

Admiral FREEMAN. That is an area that is all by itself, Senator. GSA is striving to develop functional specifications for our computer procurements which will state what it is we want the computer to do. I don't care whose computer we get. What has been lacking in the computer world, in my opinion, and with the people on whom I lay this responsibility, is there has not been the systems engineering to define what it is you want the computer to do. All you need to tell the computer industry is what the product is that you want. Then stay away from defining the machinery. Let the industry come in and tell you how to define it.

Senator BUMPERS. In the design of that, do you ever take into consideration the fact that what you want to buy, the functions you want it to perform, might necessarily exclude some computer manufacturers?

Admiral FREEMAN. That would be very doubtful in the world of computers in this day and age. The problem is not the machinery, it is the task itself.

Senator BUMPERS. I take it that is not a problem for you then.

Admiral FREEMAN. Not as much as it used to be. The problem we have now is what Tom Morris mentioned, that of defining the requirement for just the normal procurements.

Senator BUMPERS. Thank you, Mr. Chairman.

JUSTIFICATION FOR HIGHER PRICED ITEMS

Senator CHILES. The Federal regulations require agencies which order off the multiple award schedule to order the lowest priced items on the schedule unless the agency fully justifies the purchase of a higher priced item. When GAO sampled some of these waivers, they found that 90 percent contained little or no justification. What steps can GSA take and what steps can the user agencies take to stop these sham justifications?

Mr. MORRIS. First, of course, the single most important thing is to get away from giving them such a wide range of choices. Like 144 letter trays can be ordered off-schedule costing from $1 to $25. That makes no sense. We will reduce that to three basic letter trays in two colors each. So that is the first thing, to take the temptation away to want to order the more luxurious or higher cost item.

PROPERTY MANAGEMENT OFFICERS

Second, I think the use of the Property Management Officer concept which now has been started in the furniture——

Senator CHILES. The use of what?

Mr. MORRIS. Of the Property Management Officer, which is a high level official in each agency, who for the first time perhaps ever, Mr. Chairman, will start paying attention to the way we spend our money and use the equipment and supplies we buy in these commercial commodities that have been considered so unimportant as not to warrant attention.

We must manage better. The Property Management Officers will help us give more discipline within the agencies to see only the lowest cost item is used.

I think those are the two key things we should encourage at this time. The Inspectors General have already done excellent work in the furniture field. I suspect they ought to do work in some of these other areas as well.

Senator CHILES. I think the Property Management Officer is certainly a sound idea, but it seems if that is to work, that person must be relatively high within the agency and have some background in property management.

I have a list of the Property Managers which have been appointed to date. I see that the Department of Energy has selected an administrative technician who works out of the Applied Analysis Office in the Dallas, Tex., field office.

Mr. MORRIS. I think that is wrong, sir. I will be glad to check for the record. I am familiar with the key people here in Washington. There are 28 that we are meeting with regularly. They are at a level of reporting generally to a Deputy Assistant Secretary or an Assistant Secretary. We are quite pleased with the quality of the people in DOD, HEW, VA, and other key agencies we are working with.

Admiral FREEMAN. We have asked for the flow down from the Property Manager concept to the regions, which may be the ones you are looking at now. What we asked for were senior people in Washington, with the designation of people we can deal with in the regional organization as well. I don't know whether that is what you have.

Senator CHILES. I will show you this list which we thought was one of your documents and let you comment on that.

Admiral FREEMAN. We will look at the list and provide a response for the record.

[The information follows:]

PROPERTY MANAGEMENT OFFICERS

The portion of the listing shown for Department of Energy is in error. The name appearing is the region 7 representative in Dallas, Tex., not the headquarters Property Management Officer. That person is named Mr. Francis Roche and carries the title, Chief, Property and Equipment Management Branch, Department of Energy, Washington, D.C.

FISCAL YEAR 1981 BUDGET REQUEST

Senator CHILES. We will leave the multiple awards schedule now and go to your budget. I will allow you to make a comment on that.

Mr. Morris, again we want to thank you for your statement. It appears to be very hopeful. We certainly will be monitoring it—at least on a quarterly basis.

Mr. MORRIS. We welcome that, sir.

Senator CHILES. Thank you.

Admiral FREEMAN. I am very pleased to appear before you again, Mr. Chairman, to discuss the fiscal year 1981 budget of GSA. This is my first appearance before you to present an annual budget.

With your permission, I would like to take a little time to summarize the background of the budget I am bringing before you today.

I have with me at the table Mr. Ray Fontaine, who is the Assistant Administrator for Plans, Programs, and Financial Management. This office is one of the organizational changes we made in the agency to centralize our budget activity so we could look at it carefully.

I also have with me the Commissioners and Assistant Administrators. They will respond to any questions you may have in their areas of responsibility.

Senator CHILES. All right, sir.

PUBLIC PERCEPTIONS OF GSA

Admiral FREEMAN. I would like to discuss also the public perceptions of the agency and what we are doing to correct them.

I have a very positive attitude about the GSA, and most particularly about the discussions that Mr. Morris embarked upon, and you will hear from the other Commissioners, too.

I think we have made some progress in the last 10 months. I recognize much of this time has been devoted to recruiting outstanding management personnel and to developing action plans for a number of problem areas at the agency. These first steps are crucial ones and I recognize that the Congress, the Executive, and the general public are all interested in seeing actual progress.

I am pleased with what we have achieved so far, but we have a long way to go. I believe we are getting to a position where we will be able to achieve substantial savings for the Government and the taxpayers in the decade ahead through sound and effective management.

Our strengthened management system and improved professional planning processes should enable us not only to carry out the agency's assigned responsibilities in a cost-effective and efficient manner but also to insure that fraud and mismanagement do not reoccur. We now have a comprehensive training program underway which will, I believe, give us the human resources we need now and in the future to support these initiatives.

Public attention has been focused on a number of poor practices at the General Services Administration. These include: (a) Empty space for which we are paying rent; (b) poor construction management practices; (c) wasteful repair and alteration procedures; (d) wasteful supply practices; (e) poor personnel practices; (f) less than satisfactory attention to civil rights; and (g) inattention to matters of health and safety. The public perception is that these problems are continuing and that they are condoned.

Most of the problems highlighted in congressional hearings and media stories had their origin long before the team currently managing GSA came aboard. I do not accept the blame for what went before. I do, however, accept complete responsibility for correcting these problems as rapidly as possible in a cost-effective manner.

I expect that as our Inspector General's office expands, we will find more problems; thus, the public perception will continue to be that past poor management practices are continuing. I hope that by positive action we can correct this.

Past practices which led to GSA problems are not condoned, and I wish I could assure this committee they are not continuing. For example, the office excellence program which originated in 1973 led to poor management practices for the acquisition of office furniture. This same mistake could have been repeated with regard to systems furniture. Changing long-term habits is not an easy task. My strategy has been one of study, planning, and corrective action.

The study and planning phases are over. We are in the corrective phase, a phase which has and is meeting substantial resistance from those within and outside the agency whose comfortable position is being changed. I hope to achieve needed and desired results without major surgery. However, I am prepared to take the latter course, if necessary. We are, of course, dependent on the cooperation of other Federal agencies to achieve the desired results, and I am pleased to report that we are receiving such cooperation and assistance in most cases.

One of the perceptions which has received public attention is that I, as Administrator of General Services, am downplaying the extent of fraud in the agency. I would therefore like to restate my position on the scope of fraud involving GSA, its personnel, and its programs.

I have made several statements on this subject at congressional hearings and in other public forums. Never once have I minimized the extent of the fraud. Fraud, regardless of its size, has no place in any Federal agency. However, I think it is equally important that we do not become obsessed with attempts to quantify these problems. Estimates of the scope of fraud and the number of people involved—based as they have been on simple extrapolations of limited, nonscientific samples—do not serve to either help management in identifying vulnerable program areas or to discipline those who are deserving of discipline.

Fraud has a distinct and criminal meaning and has become synonymous with scandals within the General Services Administration. This is scandalous and reflects on the leadership of the agency.

I have repeatedly emphasized that the vast majority of GSA employees are hard-working, honest people. Past management practices have created very wasteful procedures. I want to make this a cost-effective agency with restored credibility.

What I believe needs far greater emphasis is the fact that the cost of waste and mismanagement is much larger than the dollars lost through fraud. This is the management area where I can and will have the greatest impact. And this is where I will concentrate my personal efforts.

IMPROVED MANAGEMENT PERFORMANCE

In summary, I believe our problems result from three factors: Stupidity, mismanagement, or poor management, and fraud and malfeasance. Regardless of which of these areas are involved, something must be done.

I am personally overseeing efforts to insure improved management performance. The Inspector General of GSA will oversee efforts aimed at uncovering incidents of fraud. In an agency this size, there will always be a need for investigations. The Inspector General has complete independence in following any indication of fraud and malfeasance, regardless of the level it might touch.

In addition to these efforts, the Inspector General will become increasingly more involved in the management review area. I believe that management audits are an invaluable tool in the installation of the necessary checks and balances in our system.

This was further highlighted by Mr. Morris in the area of multiple award schedules.

Senator CHILES. Your statement is very positive in regard to those subjects. I am delighted to hear it. We want to assist you and intend to assist you in every way that we can.

Admiral FREEMAN. I wouldn't want to in any way downplay the efforts of this committee, Mr. Chairman, in providing assistance to us. I know it will continue, and we welcome its support.

Inadequate attention has been paid in the past by the management of the Federal Supply Service to the matter of eliminating Federal specifications and substituting commercial item descriptions. I think Mr. Morris has covered pretty thoroughly what our goals are there.

I am looking and am going to do the best I can to insure that we use commercial item descriptions and maximum competition and that we will, over the next few years through conversion of the CID's, introduce competition on six items of office furniture formerly purchased on sole source or multiple award.

FURNITURE PROCUREMENTS

I would like to say a few words about our recent actions in the furniture area. It is obvious to me, both before and after I assumed the position as Administrator of GSA, that we had failed to comply with or enforce the statutory requirements of the Federal Property and Administrative Services Act of 1949 in this area. As you recall, I think you are aware of the moratoriums that have been held.

Regrettably, for a number of reasons we have not been wholly successful in this area. First, we have an antiquated and inadequate computer ordering system; inept management over excess stocks; and a lack of accountability in the Federal property management area.

This matter I believe has been adequately highlighted by the recent

Inspectors General task force report on furniture procurement. The results of our recent efforts, however, are encouraging. One such example is the cancellation by the U.S. Department of Agriculture of office furniture orders for the period October 1979 through March of 1980 pending the establishment of a better requirements determination system.

Senator CHILES. When did you get that cancellation from Agriculture?

Admiral FREEMAN. April 7 of this year, sir.

Excess property management in the furniture area now falls under the Federal Supply Service. I can assure you regarding the inventory of excess furniture and new stock requirements. This has been effective and we are making progress.

Operation Clean Sweep is off to a good start. However, again, I am not completely sanguine that we will be completely successful even with this effort. It is going to take retraining and constant management emphasis to break the habits of many years.

We have not solved the problem. We have, however, taken steps to allow us to determine what resources are already available to systematically determine the actual furniture requirements of the various agencies and then develop plans for oversight and control of agency purchases.

I readily admit the actions to date have not resulted in an absolute, across-the-board shutdown of furniture purchases, but I believe it is important that we understand exactly what purchases have been made since the freeze was first announced on October 9, 1979, and why these purchases were made.

Between October 9, 1979, and March 13, 1980, $36.8 million in purchase orders for furniture in the specified categories were in fact released. These purchases took place beginning in late December 1979 in line with an announced plan which envisioned the release of all requisitions held by FSS pending agency validation of need.

The purchase orders consisted of the following: $12.9 million, as required under court order of November 5, 1979. Delivery on these orders will be completed in June 1980.

Orders of $6.9 million for shipment against a large number of small contracts, most awarded prior to the moratorium in October 1979. This included orders of $2.5 million from small business firms, $0.7 million from 8(a) minority contractors, $1.6 million from the Federal Prison Industries, and $0.5 million from the National Industries for the Blind.

Competitive orders of $17 million representing two contracts for double shell chairs placed in January and February. These orders were needed to replace almost depleted stocks, as there had been no procurement for approximately 18 months. In addition, there was evidence that contrary to directives, an oral commitment to award had been made prior to the October freeze, which probably legally bound the Government. Appropriate action on this matter is under review by the Commissioner of Federal Supply Service.

No new contracts have been initiated since March 13, 1980. Some orders have been released in accordance with prior commitments. All obligations for new furniture purchases for stock in the remainder of the current fiscal year are now under review.

I do believe that our actions in this area were reasonable and carefully designed to allow us to revalidate requirements, while at the same time not interfering with essential agency programs. The moratorium has been a positive force and one which is already showing significant results.

In fiscal year 1979 the purchases of office and household furniture for depot stock, direct delivery and schedules totaled $259 million. Purchases through March 1980 are at a substantially reduced rate—a 6-month total of $104 million. Furthermore, the freeze applied by OMB is expected to significantly slow purchases during the remainder of fiscal year 1980.

DISADVANTAGES OF FURNITURE RESCISSION LEGISLATION

I am aware that you, as the chairman of this subcommittee, have introduced legislation which would rescind $229 million from the fiscal year 1980 budgets of the departments and agencies for the purchase of furniture. Such legislation, if enacted into law, would create some difficulties. A 12-month rescission of that size, particularly if undertaken after 7 or more months of the fiscal year had passed, would require that the agencies make sizable reductions in other accounts in lieu of furniture expenditures already incurred. We have previously indicated to OMB that a reduction in fiscal year 1980 of $60 to $90 million appeared to be the maximum feasible, prudent reduction.

A second point needs to be considered. A blanket rescission creates special problems in that it does not discriminate by type of furniture and usage category. The work of the Inspectors General and critiques from various investigations have revealed that the primary problems appear to be in the office furniture area. Out of the $259 million of purchases in fiscal year 1979, just over half or $132 million was in that class of furniture. Hence, a blanket rescission would penalize other areas which are not necessarily the source of the problem.

It is strongly urged that in lieu of a blanket rescission an orderly program to strengthen agency requirements, planning and property management control be mandated by the Congress and OMB. GSA is fully prepared to undertake that program. I believe that the initiatives already underway in this area would form the essential core of any such effort.

SUSPENSION AND DEBARMENT OF GOVERNMENT CONTRACTORS

Another issue which has attracted a good deal of interest is GSA's procedures for the suspension and debarment of Government contractors. Our past procedures have not, in our opinion, been sound, and these have been revised by a GSA procurement regulation dated February 28, 1980.

Our procedures in this area were given prominence by the controversy over the suspension of debarment of the Atlas Paint Co. In February 1980, GSA debarred Atlas for a period of 3 years from doing business with GSA. However, the Atlas debarment was suspended for several reasons which have been discussed in previous hearings.

At my direction Commissioner Morris on March 5, 1979, requested GSA's Inspector General's office to perform an audit of Atlas to assure that they were complying with the terms of our agreement with them. I said in earlier testimony that I would not second-guess the contracting officer's decision as to whether we should have entered into that agreement. However, I did and still do question whether, as a matter of policy, such agreements should be entered into in the first place as a substitute for suspension or debarment. However, as the inquiry by the Inspector General's office clearly revealed, the company had failed to live up to its commitment to separate from its management of Government contracts an individual convicted of conspiring to defraud the Government. We then reinstated the debarment, and this action was sustained by the U.S. district court.

Senator CHILES. It was sustained?

Admiral FREEMAN. It was sustained.

Senator CHILES. So it is possible to disbar somebody if they fraud the Government?

Admiral FREEMAN. Not only that, but if I can read on, I will show you some other examples.

I want to stress that it is vital that all contractors doing business with GSA understand that they must conduct themselves with honesty and integrity. Regulations have recently been issued which require certification regarding previous crimes, debarments, suspensions, and defaults. Where they do not, appropriate sanctions will be imposed.

The committee may be interested to know that Atlas Paint & Varnish was not the first contractor debarred in 30 years but that in the past year GSA has debarred 24 individuals and 18 companies from doing business with this agency. We do not take these actions lightly, but where it is necessary we will not hesitate to act.

I would also like the committee to know that I am submitting the necessary documentation for review and approval by the Office of Personnel Management to require financial statements from selected contracting officers and quality control inspectors employed by GSA.

FSS INITIATIVES

Many of the initiatives which we have taken in the Federal supply area have resulted in significant cost savings for the Federal Government. Yet to come is a review of our Federal supply warehousing efforts in the development of necessary detailed procedures as to: (*a*) Whether we drop ship or store; (*b*) what life cycle cost determinations we make in the various commodity areas; and (*c*) how we set our inventory levels.

Changing the patterns of historical purchase procedures in the General Services Administration has not and will not be easy. It meets substantial resistance from those who have been associated with the purchase programs for the last 10 to 15 years, as well as from various industry groups whose predominant income derives from Government purchases.

Also opposed to change are a number of our customers who have been brought up by GSA on the philosophy that, "If you want it, we can get it for you," and not on the philosophy, "If it is something that is needed to accomplish the mission of the agency, we can purchase it in the most cost effective, efficient and timely manner."

My last observation in the area of Federal supply is that we are making a comprehensive survey of our retail store operations. While we have allowed some new items in the stores, we recently issued a directive which states that no additional stock items will be added pending a complete review of the retail store operation.

This has as an objective: (*a*) Reduction in the number of retail stores; (*b*) reduction in the inventory, both in range and quantity, within each retail store; (*c*) accountability for the inventory by the retail store manager; (*d*) automated inventory management by automatic cash registers—which are already in being in the Washington area—and (*e*) substantial reduction in store hours for each retail store, since a review of some retail store operations indicates a low level of transactions during the hours they are available to customers. We recognize that these corrections are absolutely necessary. They are ones that came from previous investigations and were highlighted, and we will keep the committee informed of our progress in this area.

I would like now to turn to the Public Buildings Service and the——

Senator CHILES. Admiral, our time is running short; if you could brief the rest of that for me. I have read your statement. I wanted to hear from you in the furniture area especially and in the other areas.

Admiral FREEMAN. All right, sir. Let me just conclude with the last paragraphs.

The previous discussion only highlights some of the problems and the solutions and plans which we are developing. I recognize the impatience of our critics. However, GSA didn't get into the situation in which it currently finds itself overnight. It has been operating in this fashion for a number of years.

Precipitous changes without sound strategies and well-developed plans can only be far more costly to the American taxpayer. I remain confident that I head a basically sound agency and that we can make it the cost-effective agency which it was originally designed to be. I have in place a good management team which will be taking short-term, effective actions which will not jeopardize the long-range goals of the agency.

I cannot make sound management changes based on public perceptions fed by misinformation and editorialized comments on leaked draft investigative or audit reports, which in most cases deal with actions originating long before I became the Administrator of General Services. I must deal with facts and situations as they now exist if we are to do the job right and restore our credibility. To do otherwise would be to continue the reactive crisis management which has in the past almost immobilized the agency.

We do many things right. Audits and investigations will continue to be issued which will generate adverse public comment. I support these audits and investigations and must accept the adverse press. That is a hazard of public service.

The problems are many; the alternative solutions in many cases are not completely satisfactory. However, nobody said it would be easy. I am enjoying it. We will be successful. The challenge is as great as any manager could ask for, and I owe my country the successful completion of this task before me.

Senator CHILES. Thank you, Admiral. Again, it is a very positive statement. We certainly feel with that kind of attitude that there can be substantial progress made.

NATIONAL DEFENSE STOCKPILE TRANSACTION FUND

Going now to some of your budget items, the largest single increase is $148.9 million requested for the national defense stockpile. According to the Strategic and Critical Materials Stockpiling Act which was approved July 30, 1979, the stockpile acquisitions are to be financed from receipts of stockpile disposals. Receipts from the stockpile disposals are placed in the stockpile fund to be used for subsequent purchases and all disposals must be approved by an act of Congress.

How much is currently in the fund available to use?

Admiral FREEMAN. No funds are currently available for use as an appropriation for stockpile acquisitions has not yet been approved.

On April 30, 1980, there was about $70.3 million in the national defense stockpile transaction fund that had accrued from previous congressional authorizations. Our estimate of additional revenues from sales for the balance of this fiscal year and next indicate approximately $390 million will be deposited into the fund.

DISPOSAL LEGISLATION

Senator CHILES. What is the status of the legislation to permit the disposal of approximately $177.6 million of additional items from the stockpile this year?

Admiral FREEMAN. The original administrative legislative request for disposal authorization covered some 10,000 long tons of tin, 1.5 million carats of industrial diamonds, and some 15 million ounces of silver.

The final enabling legislation to authorize disposal of additional materials was enacted on December 29, 1979, Public Law 96–175. This legislation authorized the disposal of 35,000 long tons of tin, 3 million carats of industrial diamonds, but the disposal legislation for silver was not enacted, leaving 139 million ounces in excess to strategic requirements.

Senator CHILES. What items were proposed for acquisition?

Admiral FREEMAN. That is a classified response which I would be glad to furnish the committee.

Senator CHILES. All right, sir.

INFLATIONARY ASPECTS

Has the inflationary aspect of the purchases been considered?

Admiral FREEMAN. We have considered the inflationary aspect of the proposed acquisitions in developing the materiels plan to initiate the restructuring of the stockpile. Pursuant to the law under which we operate now, 96–41, plans to acquire or develop these materials are developed.

Our proposals for market actions and potential market impact are reviewed by FEMA, the Federal Emergency Management Agency, and interagency representatives from the Departments of Defense, Treasury, State, Commerce, Interior, and the OMB. These reviews are made with full understanding of the President's anti-inflation policy, sir.

Senator CHILES. I would like to have you—again, this can be off the record—share with our subcommittee and the staff what kind of criteria went in for making the decision that these items would not be inflationary at the present time.

It is the constant battle of trying to see what we can do to reduce inflation. I want to make sure this is an item you will study.

Admiral FREEMAN. Yes; I would like to have Mr. Roy Markon, who manages the stockpile acquisitions and disposal and can talk in some detail to the inflationary aspects, join me.

Mr. MARKON. Thank you.

Mr. Chairman, the commodities selected for acquisition and disposal from the strategic and critical stockpile result from the annual materiel plan process. This process is managed by FEMA. There are four subcommittees in that process. The GSA input into this process is to take the goals and objectives of the stockpile as determined by FEMA, price them out in today's market and give long-term projections the best we can.

This information is then fed to the four committees. There is a Strategic Implications Committee which is chaired by the Department of Defense which has FEMA representatives and representatives of the CIA. There is an International Economic and Political Impact Committee which is chaired by the Department of State. There is a Market Impact Committee chaired by the Department of Commerce. And there is an Economic and Budgetary Impact Committee chaired by FEMA. We participate in all of these subcommittees.

When we go through all of the subcommittees, we end up with a plan that is put together and presented to FEMA. This plan is presented to the National Security Council and OMB. With their approval, this becomes the action plan that we incorporate into our budget.

Senator CHILES. All right, sir. I thank you for that information.

INSPECTOR GENERAL

Going now to the Inspector General, we see that you are talking about 50 positions and $2.8 million. In the increase in fiscal year 1980, the Office of Inspector General had $18.9 million and 593 positions. This is $6.6 million and 220 positions more than the administration requested in fiscal year 1980.

Of the 593 positions available to the Inspector General's office this year, how many are currently filled?

Admiral FREEMAN. The 19 Security Division positions, included in the 593 total, were transferred from the Office of Inspector General to the Office of Human Resources and Organization effective October 1, 1979, pursuant to information we provided to your committee. As of April 30, 1980, there are 497 positions currently filled, which includes the 19 transferred.

Senator CHILES. What is the current number of auditors and what is the current number of inspectors?

Admiral FREEMAN. Of the 497 positions currently filled, 229 are auditors and 61 are inspectors.

Senator CHILES. Pardon?

Admiral FREEMAN. 229 auditor positions are currently filled.

Senator CHILES. You have about 76 vacant positions now. How do they break down between the auditors and inspectors?

Admiral FREEMAN. We expect to hire a total of 272 auditors by the end of fiscal 1980, which is 43 more than we currently have on board. The majority of the positions we are filling in the Inspector General's office now are auditors.

Senator CHILES. Are you going to be able to orderly employ and hire not only the vacant positions that you have but also the requested positions that you have?

Admiral FREEMAN. We expect to fill all of the 593 positions authorized for 1980 as well as the additional positions requested for 1981. These positions are being filled with employees who have significant subject matter expertise and are being rapidly assimilated within the Inspector General programs. We will be glad to furnish a detailed breakdown of the types of positions filled for 1980.

Senator CHILES. All right, sir.

[The information follows:]

OFFICE OF INSPECTOR GENERAL FISCAL YEAR 1980 STAFFING

	As of April 30, 1980				
	On board	Commitment	Total on-board/commitments	Projected May 1980–Sept. 1980	Fiscal year 1980 total authorized
Auditors	229	12	241	31	272
Investigators	109	6	115	19	134
Inspectors	61		61	10	71
Attorneys	7		7		7
Managerial	17		17	5	22
Clerical	55	2	57	11	68
Subtotal	478	20	498	76	574
Security Division transfered to Office of Human Resources and Organization, October 1, 1979	19		19		19
Total	497	20	517	76	593

VACANT SPACE

Senator CHILES. There have been numerous GAO reports since 1978 regarding the practice of leasing space that remains unoccupied for long periods of time while alterations are made to them. It has been suggested that GSA should minimize payment of rent for unoccupied space during alterations. Nevertheless, GSA continues to pay rent for unoccupied and vacant space sometimes for 1 year or more while alterations take place in leased buildings.

Why does that situation continue to occur, and what action does the GSA suggest be taken to minimize or stop that situation from occurring?

Admiral FREEMAN. Senator, I think we are always going to have some vacant space regardless of how hard we try to cure the problem. My concern is the vacant space caused by inadequate space planning, resulting from previous policy which said that you couldn't do tenant alterations with the individual from whom you leased the building. That policy has been canceled.

We are going to provide more sound management to our regions in the area of space requirements, which includes a lot better oversight than we have in fact provided.

I wouldn't leave the impression, however, that we have not made substantial progress in the area of vacant space. We had about 24.9 million square feet of vacant space in 1975. In September 1979 the vacant space had been reduced by 9.7 million square feet to 15.2. So we are in fact making progress. We have made even more progress this year.

My concerns are the instances where we have been lackadaisical in our management and these have received much publicity. I am taking specific action on these with Mr. Marschall, the Commissioner of the Public Buildings Service, to find out; one, why it happened; two, do we need to change procedures or do we need to change the manager. I find in some cases there is no excuse for what we did.

Senator CHILES. Having had something to do with commercial property at one time or another, generally if I was trying to lease a space to a tenant, and the tenant required me to make some alterations to the lease, I haven't found many tenants that were willing to start paying rent at the time we made the agreement but only when the building was ready for occupancy.

Yet I see many examples, including Columbia Plaza and the 1401 Research Boulevard, Rockville, Md. There is a building where in April 1976 GSA leased the entire building to be used as a laboratory facility for the Bureau of Alcohol, Tobacco and Firearms. The lease was effective July 1, 1976, at an annual rent of $209,000, which excludes all service and utilities. Alterations requiring almost 2 years were made to the building at a cost of $2.15 million to convert it into a laboratory facility. During this time the building was unoccupied and GSA paid a rent of about $407,000.

That just doesn't sound to me like the way most commercial transactions would have taken place in that regard.

Admiral FREEMAN. I would like to have Mr. Marschall come up here. He and I are exploring ways in which we can correct the problems which we find ourselves in.

In areas where we have had a tight market for space, we have in some cases leased space as is and do the alterations afterward. This is something we both agree is not necessary. We ought to force the situation.

The solution is to get out of leasing as much as we possibly can and get into a program of constructing Federal buildings. Our rental of space budget has now grown to over $600 million annually as you see in this budget. In my opinion we have gone beyond the cost-effective basis of leasing. I will continue to have problems with leasing.

I was involved in one lease just recently to acquire scarce space in the Washington area. We have had to waive some of our requirements in order to house high-priority programs. So I find myself with two problems: One, lacking a building program to permanently house on a cost-effective basis Federal employees; and two, inheriting certain past management practices that have led us into leasing as is, and then altering after we lease.

Mr. MARSCHALL. I couldn't have put it better. It is not our practice to rent space that is not ready for occupancy. I too have been in the commercial world.

MARTINSBURG IRS DATA CENTER

Senator CHILES. When are we going to get some water and electricity to the IRS Data Center in West Virginia where we are paying $1,250 a day?

Admiral FREEMAN. Martinsburg?

Senator CHILES. Yes, Martinsburg.

Admiral FREEMAN. I haven't got that specific answer as to when that alteration will be completed, sir.

VACANT SPACE

Senator CHILES. Can you distinguish between what is vacant because of alterations and what is vacant because you have no tenants desiring the space?

Mr. MARSCHALL. Yes, sir, we can. Approximately 2 percent of the leased inventory is vacant and has no identified backfill tenant. This situation arises when an agency activity elects to give GSA 120 days' notice and relocate from the space because of an agency program change. In these limited number of cases GSA's options are threefold: Cancel the lease, negotiate out of the remaining term, or secure a backfill tenant.

But this is a very small portion of what we are talking about.

Senator CHILES. The agency proposes $106 million or an 18-percent increase in the allocation for rental of space. That will permit a 6.6-percent increase in the leased space inventory at the end of fiscal year 1981. Why is there a need to permit an expansion of the leased space inventory when the size of the Federal Government is remaining relatively stable and you have even a hiring freeze now in effect?

Mr. MARSCHALL. Mr. Chairman, this goes back to OMB Bulletin 79–8 which directed all executive agencies to review their space needs and advise OMB of their priority requirements. This resulted in a stated backlog of 10.3 million square feet.

I find it just as difficult as you do to find out why this is happening in what is considered to be a declining population of Federal employees. I don't see too many people sitting out on the street waiting for an opportunity to move into office space. But we have had some rather interesting and extensive new demands. We have had 500 district offices of social security which have required an expansion of space totaling approximately 1 million square feet. Interior has requested over 2 million square feet at nearly 300 locations, primarily for energy-related programs. Justice has required approximately 900,000 square feet for the various locations which are affected by the Omnibus Judgeship Act, for new courts.

So these things are taking place while ostensibly the Government population is going down.

Senator CHILES. Doesn't that indicate to us that they never give up any space?

Mr. MARSCHALL. You are absolutely right. This is the thing that we have to deal with.

Senator CHILES. That is the territorial prerogative that I see operates very strongly in the Senate. They say no one here ever gives up anything that they get, only on death. We are still finding offices here that belong to Senator Russell [laughter] the many years he was chairman of the Appropriations Committee, which was for a long period of time.

Mr. MARSCHALL. I look out and I see the beautiful construction that is going on. [Laughter.]

I think you are absolutely right. But we have had trouble for not occupying rental space adequately because we didn't take a client agency to task. That client agency had some very peculiar requirements both from a security standpoint and a safety standpoint. We have warehouses that sit empty because there may be two warehouses here and one in the middle. Sooner or later we will get rid of them.

Mr. Markon and I are discussing ways and means of eliminating warehouses where he has storage that can better be accommodated in other areas. We are right in the process of doing a little of that.

I don't want to sound like a Pollyanna, but it ain't going to happen overnight. We are going to peck away at it and do the best we can.

MARTINSBURG IRS DATA CENTER

Admiral FREEMAN. Mr. Chairman, I can give you an answer on the Martinsburg construction.

Senator CHILES. Go ahead.

Admiral FREEMAN. On October 29, 1979, we awarded the hookup package. The three contracts are virtually complete. The occupancy of approximately 20 percent of the space was completed in January 1980. We expect to fully occupy the building between June 15 and September 15 of 1980.

PRESIDENTIAL LIBRARIES

Senator CHILES. Last November we held oversight hearings on the cost of former Presidents to the U.S. taxpayer and we learned that the taxpayers had paid for five capital additions to Presidential libraries. Before that time most of us had been under the impression that the buildings and the capital costs of Presidential libraries were donated to the Government.

Is anything included in this year's proposal for capital improvements, renovations or expansions to any of the existing Presidential libraries?

Admiral FREEMAN. Rather than use the words capital improvements, as we define it, there are none. However, there are some planned repair and alteration projects for three of the libraries: Interior and exterior painting at the Franklin D. Roosevelt Library; parking space repairs and resurfacing of the roadway at the Eisenhower Library; repair of parking areas and elevator repairs at the Truman Library.

FORMER PRESIDENTS

Senator CHILES. I might note for the record yesterday the Presidential funding bill was introduced in the House. Now the bill is working in both bodies. Congressman Preyer introduced that in the House yesterday.

For office allowance, $798,000 is requested for former Presidents Ford and Nixon, which is approximately $39,000 more than was appropriated for them this year. A large part of that increase is due to the fact that former President Nixon has moved to New York City and the rent there is more expensive. An increase of $12,000 is for additional travel expense: An increase of $5,000 for former President Nixon and an increase of $7,000 for former President Ford, to provide each former President with $35,000 for travel expense.

We were told last year that almost all of this money is used for travel expenses of former Presidents Ford and Nixon's staff. Why are their travel expenses increasing? Did GSA ask for specific justification for these increased travel costs?

Mr. FONTAINE. Mr. Chairman, we did talk with both of the staffs of former President Ford and former President Nixon. We did not get detailed, specific descriptions, but the request was to increase their travel amounts as they were going to become more active. There were some trips to Europe planned by Mr. Nixon. The travel request reflects increased air fares and hotel fares.

Senator CHILES. Is any of that in writing?

Mr. FONTAINE. No. This was over the phone from the staffs.

FISCAL YEAR 1980 SUPPLEMENTAL

Senator CHILES. I notice the 1980 supplemental for an additional $66,000 increase in space cost for former President Nixon because of the relocation of his office. What was the actual cost of moving President Nixon's office to New York City?

Mr. FONTAINE. A little under $20,000. Since the budget was prepared, he decided to go into federally owned office space rather than commercially leased space. So that supplemental for $66,000 could be reduced and the full-year cost in 1981 of approximately $82,000 can be reduced also.

MOTOR POOLS

Senator CHILES. Looking at the report that you gave us in regard to your motor pool fleets, Admiral, it looks like you have a 16.8-percent reduction for your GSA cars, the number of vehicles assigned on a full-time basis to GSA, but only a 2-percent reduction on those vehicles that are outside of GSA's use. Why couldn't you hold that——

Admiral FREEMAN. I am not satisfied with the reduction, Senator, and I haven't given up on this one at all. One of the programs which I am currently involved in is working with the Department of Energy on energy conservation within the Federal Government. This is an area which has as much potential as anything I know of in the Federal Government.

Senator CHILES. This is all right in the District of Columbia area where there is some bus transportation.

Admiral FREEMAN. No, sir. Our vehicle utilization study covered 33 metropolitan areas throughout the country. My basic policy is we ought to look very carefully at revising our motor pools in areas where we have adequate public transportation. This particular 2-percent figure will be improved on. I hope the next time we come before you we will have a better performance record.

QUESTIONS FOR THE RECORD

Senator CHILES. Admiral, we will have a number of questions for the record that we will ask.

Admiral FREEMAN. Yes, sir.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS POLICY

QUESTION: In its January 1980 report GAO reported that GSA has failed to implement the "Buy Commercial" policy due to a lack of leadership and commitment from top management. GSA replied that they will soon issue a comprehensive agency implementation plan and is developing a series of commercial item descriptions. Has the comprehensive implementation plan been completed?

ANSWER: An implementation plan has been developed subject to final approval. We are already operating under the plan to a large extent. Specific accomplishments include the issuance of Temporary FPMR E-69 which outlines the requirements for replacing detailed specifications with CIDs including specific instructions for CID development, development of draft FAR coverage by OFPP commented on by GSA, establishment of an FY 1980 procurement plan for replacing specs with CIDs (493 CIDs/$180 million), initiation of a plan for spec to CID conversions for 1981 procurements (due by July 31), establishment of the Multiple Awards Schedules Task Force, identification of target multiple award schedules/commodities for competitive procurement to CIDs by September 1980 and September 1981, revision of the economic model per GAO recommendations, elimination of low demand, slow moving items from our depot system (10,000 items removed since 1977) and a host of actions related to our Furniture Management Reform Program.

QUESTION: When is this plan scheduled to be fully implemented?

ANSWER: We are largely operating under this plan at the present time. Total implementation including complete documentation of required permanent operating policies and procedures is to be completed within the next 90 days.

QUESTION: What will be the impact of this plan on the current size of the GSA warehousing program?

ANSWER: While it is too early to accurately predict the total impact, we certainly expect that a reduction in warehouse space requirements and increased potential for consolidations. A major impact will result if removable of furniture items from the depot system in favor of direct delivery occurs. This could reduce space requirements by 10 percent or more.

QUESTION: Who has been assigned agency-wide authority and responsibility for implementing the "Buy Commercial" policy in GSA?

ANSWER: The ultimate responsibility lies with the Commissioner, FSS who has established two project managers, one for overall oversight and responsibility for ADCoP appointed via GSA Notice FSS 228 dated August 13, 1979, and one for directing Acquisition Planning including the Multiple Awards Schedules Task Force and Reform Program.

QUESTION: How many commercial item descriptions (CID's) have been developed, and how many detailed Government specifications have been eliminated?

ANSWER:		
	CID's developed to date	339
	Federal specifications and standards cancelled	757
	Total CID's to be completed by 9/1/80	1,105

QUESTION: How many purchases in terms of items and dollars have been made using CID's?

ANSWER:

	($000)
Wrench Set, Socket	$252.0
Anti Freeze	2,000.0
China Marking Pencils	464.0
Glue Stick	6.3
Tires (215 different combinations)	1,900.0
Total	$4,622.3

QUESTION: To what extent has the policy increased competition and saved money?

ANSWER: Based on limited completed procurements, competition is increasing and savings are being realized, especially considering inflation factors.

For example, in procuring anti freeze, we had 15 bidders using CID vs. 5 using specifications.

The wrench set, socket procurement resulted in a unit reduction of $60.75 using a CID in lieu of a specification, and a total saving of $182,250 when procuring 3,000 units.

Tires were procured using a CID and Life Cycle Costing (LCC) resulting in bids from major suppliers. Savings being analyzed but complicated by new LCC procedure vs. previous low bid.

QUESTION: What is the estimate of purchases that will be made using CID's in FY 1980?

ANSWER:

	# CID's	$M
Specifications to CID's conversion	493	$180
Multiple award to single award using CID's	70	42
Total	563	$222

QUESTION: Will full implementation of the "Buy Commercial" policy enable the Government to stop purchasing office furniture built to detailed Government specifications?

ANSWER: Yes. We are currently reviewing a number of acquisition strategy alternatives all based on using functional/performance CID's in combination with life cycle evaluations and commercial warranties. CID's are under development for a number of the high volume "problem" items in the furniture area including file cabinets and double shell chairs.

FULL COST RECOVERY RATES

QUESTION: Full cost recovery would permit the Federal Supply Service (FSS) to charge its customers for the entire cost of its operation. If this concept were implemented, FSS wouldn't need to request an annual appropriation to recover costs that are not passed on to its customers. Why doesn't GSA price items at full cost and eliminate the need for this appropriation?

ANSWER: As a result of detailed analysis and studies GSA submitted a legislative proposal to implement full cost recovery in 1974. The proposal was withdrawn due to strong objections from DOD. While GSA favors the concept of full cost pricing, we believe the concept is only feasible if used by all of the major government supply systems.

QUESTION: Would it be practical for GSA to use industrial funding to eliminate the need for this appropriation?

ANSWER: In the event that the problems with other supply systems were resolved, the implementation and use of a full cost recovery type of accounting system would be highly practical.

QUESTION: What accounting system and records changes would have to be made to implement industrial funding? What is the estimated cost of these changes?

ANSWER: To be fully implemented, the Full Cost Disclosure or recovery system will require compatible income, cost, and expense data concerning the O.E., FSS appropriation, the General Supply Fund, and the costs related to overhead type services provided by the Office of Finance and the Office of Personnel. At the present time, only the O.E., FSS appropriation has been converted to the National Electronics Accounting and Reporting (NEAR) System, which allows for both cost center and functional accumulation of accounting information. We understand that the conversion of all other GSA funds to NEAR is planned at some future date. We do not have an accurate estimate of the costs of making a full systems conversion to facilitate full cost recovery at this time.

QUESTION: Does GSA favor or oppose implementing full cost recovery for items provided through the Federal Supply Service? (Provide detailed rationale for the position taken.)

ANSWER: As a result of a recommendation by the Commission on Government Procurement made in 1972 that industrial-type funding or Full Cost Recovery be used by government supply systems, an extensive analysis of feasibility of introducing this type of funding to the Supply Operations of the Federal Supply Service was performed. This study concluded that full cost recovery financing would produce positive benefits to the operation of the Federal Supply Service and to the Government as a whole. This type of funding would provide a more effective means of cost control over operations, more flexibility in financing, budgeting and accounting methods, promote cost consciousness on the part of customer agencies and motivate managers to operate their activities in the most efficient manner possible. The introduction of such a system, however, was found to be feasible only if other major supply agencies were funded in the same manner in order to preclude large price variances in like items in separate sustems. In 1974, GSA submitted a legislative proposal to implement full cost recovery. This proposal was withdrawn due to strong objection from DOD. Since that time, FSS has pursued the development of a full cost disclosure system as an alternative to full cost recovery.

SELF-SERVICE STORE PROGRAM CONTINUES TO HAVE PROBLEMS

QUESTION: The GSA Self-service store program continues to have problems. The conviction of many of the store managers resulted in stringent actions by management that caused the stores to cease to buy some commodities needed by customer agencies for nearly a year and removal of several items from store inventory. Most of the items removed were subsequently reinstated. The March 1979 reorganization of FSS also should affect self-service store operations. What additional resources and personnel have been provided to strengthen the self-service store program?

ANSWER: No additional resources and personnel have been requested in the FY 1981 budget.

QUESTION: Has GSA completed a formal training program for self-service store managers?

ANSWER: No. A full review of the program will be conducted over the next 90 to 120 days to more clearly define the program mission and purpose and the role of store managers. The review results will provide the opportunity to develop and provide formal training for all store personnel.

QUESTION: GSA is aware that many agencies establish their own stockrooms to provide regularly needed items. Does GSA believe that this practice is warranted and proper under existing laws and regulations?

ANSWER: The practice of agencies establishing their own stockrooms is warranted and proper where and whenever GSA cannot or does not provide for agencies needs through consolidated stockroom, self-service stores type operations.

QUESTION: How does GSA account for other agency stockrooms when determining whether a GSA self-service store is warranted?

ANSWER: The costs of agency operated stockrooms in the area of potential self-service stores are considered in the cost-benefit analysis made prior to determining the feasibility of establishing GSA self-service stores.

QUESTION: What has GSA done to increase supervision over store operations?

ANSWER: Directed more frequent supervisory on-site surveillance visits and provided for more frequent audits.

QUESTION: Does GSA have independent teams conduct physical inventories of self-service store inventories? If not, why not?

ANSWER: Yes. Regional Federal Supply Service Inventory Surveillance teams, which are independent of store personnel, conduct the physical inventories in self-service stores.

QUESTION: How frequently are the inventories conducted?

ANSWER: Annually or more frequently if managers are replaced or regional management determines the need.

QUESTION: What is the dollar value of shortages disclosed by physical inventories during the past year?

ANSWER: Shortages in self-service stores during the past year amounted to $66,168.20; overages during the same period were $99,061.41; amounting to a net of $32,893 (over). The net $32,893 is 0.001 percent of sales of $30,487,066 for the same period.

QUALITY ASSURANCE PROGRAM NEEDS IMPROVEMENT

QUESTION: In its September 1979 report, GAO reported that GSA's quality control program provides little assurance that goods purchased meet contract specifications or user needs. GAO recommended that GSA (1) emphasize testing the quality of goods at destination; (2) provide better supervision and training for quality assurance inspections; and (3) improve the present customer complaint system. What has GSA done to implement the needed improvements in the program?

ANSWER: In compliance with GAO recommendations to increase the professionalism of Quality Assurance Inspectors and the effectiveness of inspections at destinations, the following measures have been taken: The Office of Contract Management has been established which is responsible for nationwide quality control and contract administration; Contract Administration Specialists are being placed in each region geographically close to production sources; a Contractor Performance Evaluation Program is being developed to document good and poor performance, as a basis for giving recognition to those whose service and quality is consistently satisfactory or superior -- as well as to identify those who are consistently substandard; the frequency of on-site reviews of field staffs has been increased to evaluate their performance and spotlight opportunities for improvement; quality assurance personnel are being required to take further training and become certified in commodity inspection and testing; and a program is being instituted to monitor contract quality assurance systems through audits of material in depot stock.

The GAO Report dated September 21, 1979, "GSA Needs to Strengthen Its Inspection and Testing to Make Sure the Government Gets the Quality It Pays For," stated, that the integrity of Quality Assurance Specialists should be increased. Since that time, the Federal Supply Service has required frequent visits and reviews by supervisors, including Contract Administration Specialist visits to contractor plants; inter-regional rotation of quality assurance personnel to prevent biased relations from developing with contractors; and we have initiated the appropriate action for implementing a revision to GSA regulations to have all field inspectors, GS-11 and above, to complete GSA Form 2157, Confidential Statement of Employment and Financial Interests.

The customer complaint system is currently being studied to improve present procedures. This project is being shared with the Defense Logistics Agency to develop a common system of correcting discrepancy information covering items, supplies, and specifications.

QUESTION: The Committee understands that 150 quality audits have been planned for FY 1980. How many have been or will be conducted?

ANSWER: As of May 7, 1980, 73 quality audits of material have been initiated. Although this is behind schedule, we expect to complete 150 audits by the end of FY 80.

QUESTION: How frequently will field inspectors be rotated and will rotations require permanent change of station moves?

ANSWER: Field Quality Assurance Specialists will be rotated every three to five years. It is expected a permanent change in duty station will be necessary in those instances where duty stations are widely dispersed geographically.

QUESTION: Does GSA plan to require Quality Assurance Inspectors to file conflict of interest statements?

ANSWER: The Federal Supply Service has initiated appropriate action for implementing a revision to GSA regulations to have all field inspectors, GS-11 and above, complete GSA Form 2157, Confidential Statement of Employment and Financial Interests.

+$984,000 REQUESTED TO IMPROVE CONTRACT ADMINISTRATION IN THE FEDERAL SUPPLY SERVICE

QUESTION: Please describe for the committee the need for these additional resources and the specific program efforts that they would be focused on.

ANSWER: Our total costs for the 24 positions are based on an ASR of $23,200. Of the $984,000 in additional costs, $557,000 is for the additional positions, $197,000 travel expenses and $27,000 for miscellaneous operating costs for a subtotal of $781,000 for the contract administration increase. Also included in the grand total for the overall contracts activity are $220,000 in common distributable costs, $62,000 in pay increases over FY 1980, and a reduction of $81,000 for one less paid day in FY 1981 from FY 1980 for a subtotal of $203,000. The grand total of this request is $984,000.

PERSONAL PROPERTY REPAIR AND REHABILITATION/ PROGRAM NEEDS IMPROVEMENT

QUESTION: In its November 1979 Report GSA reported that GSA does not have enough controls to ensure that repair services are provided in accordance with contract terms. GSA recommended that GSA should improve management of the program or reduce it to a more manageable size.

What actions has GSA taken to strengthen the management of this program, i.e., specifically reducing the numbers of contracts?

ANSWER: We have terminated the two Depot Maintenance Interservice

Support Agreements with the Air Force for the repair of heavy equipment, instructed the regions to ensure that all time and material type contracts provide for parts at cost and incorporate a recordkeeping requirement clause to reduce excessive pricing and unwarranted parts replacement.

We have initiated meetings with Defense Contract Audit Agency and Defense Contract Administration Service to provide assistance on an "as needed" reimbursable basis.

We've submitted for publication in the FPMR an amendment which will clarify contract administration responsibilities for both GSA and the using activities, we also incorporated a new clause on contract administration responsibilities in both solicitations and price schedules, instructed regional operations to report Service Contract Act violations to the Department of Labor, and instructed regional operations to reemphasize the importance of the contractor's monthly reporting requirement.

QUESTION: What other actions are planned to strengthen this program and when are these actions expected to be implemented?

ANSWER: Reducing the number of time and material contracts is a continuing process. The total number of contracts is now 2,200, which represents a reduction of 12 percent since audit initiation. Completion of the action will be in December 1981. We will furnish heads of agencies with an excerpt of the GSA report and request their assistance in improving the administration order written against the GSA contracts by June 1980. We are exploring internal cross servicing capabilities to provide additional contract administration support, and furnishing implementing guidelines to regions, to be accomplished by August 1980.

Increasing internal audit surveillance through a gradual reduction of the $100,000 threshhold for pre-award reviews is now in the planning phase.

We are studying the office machine repair program to determine if we can convert to a fixed price type contract by providing annual maintenance service. A pilot test is scheduled for August 1980, the final assessment due December 1981.

We are evaluating alternative methods of contracting for heavy equipment repair and other time and material type contracts. This should be completed in May 1980.

We are assessing the budgetary impact in later years of increasing the frequency and effectiveness of field contract administration.

AUTOMATED DATA AND TELECOMMUNICATIONS SERVICE TRANSFER FROM DOD OF THE FEDERAL PROCUREMENT DATA CENTER (+$1,600,000)

QUESTION: A $1,600,000 increase is requested for the Federal Procurement Data Center which has been transferred to GSA. How much funding and how many positions were transferred to GSA in 1980 associated with the Center?

ANSWER: DOD transferred $281,500 and 12 filled positions, associated space, equipment and records to GSA in support of the FPDC for the remainder of FY 1980. Total projected expenditures for FY 1980 are $1,175,000 and for FY 1981 are $1,662,000.

QUESTION: Who will the Center report to?

ANSWER: The Center will report to the Assistant Commissioner for Information Resources Management in the Automated Data and Telecommunications Service (ADTS).

QUESTION: What is the feasibility of having the Center report to the Administrator of GSA?

ANSWER: While it is feasible to have the Center report to the Administrator, it would not be sound management to have the Administrator involved in its day to day direction. The Administrator will look to the Commissioner, ADTS for this function because of his experience with other Government-wide Management Information Systems: the Automated Data Processing MIS; and the Communication MIS.

GENERAL MANAGEMENT AND ADMINISTRATION

QUESTION: An increase of $282,000 is requested for increases to the Regional Administrator's Staff. Why can't these funds and positions be transferred from headquarters?

ANSWER: This increase includes $279,000 for 8 additional work years to expand the Regional Administrator's Staff in FY 1981. Central Office Staff was decreased by 7 FTE and associated funding in FY 1980.

+$400,000 FOR CENTRALIZED TRAINING

QUESTION: An increase of $400,000 has been requested for a centralized training program at GSA. Up until now training is a decentralized activity. Is that correct?

ANSWER: Yes, it is correct that previously there was no centralized administration of GSA's common-type training programs for the employees in the various Services and Staff Offices.

QUESTION: Have corresponding reductions been made in the operating agencies? If not, why not?

ANSWER: The basic financing for common-type training courses as well as for unique and specialized training courses is included in the FY 1981 budgets for the respective accounts of the Services and Staff Offices. The $400,000 increase in the FY 1981 budget for General Management and Administration is to provide for establishing the administration of agency-wide common-type training programs, involving the monitoring and assessment of benefits derived from training dollars spent in the individual accounts. This increase also includes funding for internship type programs and career development programs having agency-wide applicability, which were not specifically budgeted for in any of GSA's accounts.

WORKING CAPITAL FUND

QUESTION: The Working Capital Fund finances on a reimbursable basis central blueprinting, photostating, duplicating and distribution services. Part of the requested increase is to pay an outstanding "loan type advance." What agency made the "loan type advance?"

ANSWER: The currently remaining loan-type advance in the Working Capital Fund was made by the Public Buildings Service.

QUESTION: How much was it made for and what specifically was its purpose?

ANSWER: This advance amounted to $600,000. It was proportional to the levels of printing and duplicating services performed for the Public Buildings Service.

QUESTION: Please cite the legal authority for this loan type advance.

ANSWER: The basic authority is in 40 US Code 293 (Independent Offices Appropriation Act, 1946) which provided in part "For the establishment of a working capital fund... without fiscal year limitation for the payment of salaries and other expenses necessary for the operation of a central blueprinting, photostating, and duplicating service; said fund to be reimbursed in order to insure continuous operation, from available funds of constituents of the General Services Administration, or of any other Federal agency for which services are performed, at rates to be determined by the Administrator of General Services on the basis of estimated or actual charges for personal services, materials, equipment (including maintenance, repair, and depreciation on existing as well as new equipment) and other expenses: Provided, That at the close of each fiscal year any excess of funds resulting from such operation, after making adequate provision for the replacement of mechanical and other equipment and for accrued annual leave of employees engaged in this work by the establishment of reserves therefor, shall be covered into the Treasury of the United States as miscellaneous receipts."

In this instance the reimbursement authorized above constituted a loan type advance for the level of services performed for the Public Buildings Service. It was not returned previously since there was not sufficient cash balance in the Working Capital Fund.

The insufficient cash balance is caused by several significant factors. There has been no appropriation for capital since 1966. Appropriated capital is only $450,000 to finance an annual sales volume of about $17 million which has steadily increased each year; it was $11 million in 1974. The cost of inventory levels required to be on hand (paper and related products) has increased significantly each year. This Fund has been required to pay the standard level user charge starting with fiscal year 1975; there was no basis for exemption.

These SLUC payments are required to be made quarterly in advance pursuant to law, prior to generating income through billings and collections. This advance payment is about $300,000 for the first month of each quarter of the fiscal year.

QUESTION: Why can't the additional capital needs of the fund be obtained through charges?

ANSWER: We are charging our customers the going rate of the cost of providing printing and duplicating services. The income generated is not sufficient to replace worn-out and obsolete equipment and to repay the loan type advance.

PRESIDENTIAL LIBRARY MUSEUM SERVICE CENTER

QUESTION: Mr. Freeman, last November when you testified before this Subcommittee you referred to potential economies in Library operations through the combination of functions such as the Museum Service Center. The Museum Service Center was established in August 1978 at the Truman Library to assist other Presidential Libraries with their Museum activities.

We also learned during our oversight hearings that the Congress created the Presidential Library system for the preservation of papers and records for scholarly research and the intention was not to create museum or tourist attractions.

How much is requested in 1981 for the operation of this Museum Service Center?

ANSWER: Costs for the Museum Service Center total approximately $68,000. This amount includes salaries to support three employees and associated expenses. As noted, the Center was established as a means of reducing costs of operating Presidential Library exhibits by providing centralized or "pooled" services to eliminate unnecessary duplication between Presidential Libraries--each of which has its own exhibit function. Costs associated with the Museum function throughout six Libraries total $2.6 million. Of this total for operating costs, approximately $1.2 million or 44 percent is financed from Trust Funds and offset by receipts from entrance fees and museum sales desk activities. The appropriated costs to support the museum function are approximately $1.4 million annually, of which approximately $1 million is SLUC and recurring reimbursable payments to the Federal Building Fund. Thus the appropriated funds support for the program activities of the museum function total approximately $400,000 for the six Libraries.

Although one may wish to question the wisdom of these museum and exhibition activities,there does not appear to be much doubt about Congressional intent. The operation of "exhibit or museum space" in Presidential Libraries is authorized by the Presidential Libraries Act of 1955 (44 USC 2108(c)). This section authorizes the Administrator to exercise over materials in Presidential Libraries "all the functions and responsibilities" that pertain to Federal records in his custody. This Federal Records authority in turn, requires the Administrator to "provide for the preservation, arrangement . . . description . . . and exhibition of records or other documentary material" (44 USC 2105). In addition, 44 USC 2108(e) of the Presidential Libraries Act authorizes the Administrator to "collect reasonable fees for the privilege of visiting and viewing exhibit rooms or museum space in a Presidential archival depository."

Based upon this statutory authority, in every case from Hoover through Ford (with the single exception of Eisenhower discussed below), the Administrator's report to the Congress, and supporting documentation outlining the terms of agreement for the Government's acceptance of the Library, included provisions for a museum, display, or exhibit function.

In the case of the Eisenhower Library, at the time the report was approved, the already existing museum was being operated by the Eisenhower Foundation. In 1966, when operation of the museum was transferred to GSA, the transfer was reviewed and approved by the Attorney General, and a prospectus, approved by Congress that same year provided for improvements in the Eisenhower Museum.

+4,000,000 REQUESTED FOR PRESERVATION OF RECORDS/$650,000 REPROGRAMMING ALSO REQUESTED

QUESTION: $3,000,000 is requested for a 1980 supplemental and an increase of $987,000 is requested in 1981 for the preservation of records. The Committee also has a reprogramming request to provide $650,000 for this purpose out of funds previously appropriated for the relocation of the Mechanicsburg Federal Records Center.

I understand that these funds would be used for preservation of permanently valuable records and historical materials in the National Archives and Presidential Libraries.

Please tell the Committee about the need for these preservation efforts, the preservation techniques to be used and the amount already in the base for preservation of records.

ANSWER: This proposed supplemental will provide funds to the National Archives and Records Service to improve and increase the efforts being directed at the preservation of permanent records. The principal focus of these efforts will be to increase the use of microfilming, to both preserve the current record holdings, and in the case of records which can be disposed of after microfilming to reduce required storage space. The supplemental will also provide funds for the conversion of NARS' remaining nitrate film to safety base film and for the rebinding of several thousand older, valuable volumes of records.

The following summarizes this request and the actions it will accomplish:

Action	Workload (000)	Cost (000)
1. Microfilming or other appropriate technologies (pages)	8,000	$1,600
2. Nitrate aerial photo conversion (number of frames)	2,000	937
3. Nitrate still picture conversion (number of photos)	142	430
4. Rebinding (volumes)	1.5 - 4.5	33
		$3,000

The $650,000 in reprogrammed monies will be used primarily to underwrite R&D efforts to decrease the per unit costs associated with the preservation of paper records.

The increase of $987,000 in the FY 1981 request will be utilized as follows: $400,000 for Presidential Libraries, primarily for the preservation of color film (1.1 million feet); $400,000 for increased microfilming for Archives (approximately 2,000,000 pages); and $187,000 for increased rebinding (approximately 17,000 volumes).

The "base", FY 1980, expenditures on preservation totaled $2,802,000.

NEED TO NEGOTIATE DISPOSAL SCHEDULES FOR ALL RECORDS HELD IN FEDERAL RECORDS CENTERS

QUESTION: In response to a 1973 GAO report, NARS began tightening its records scheduling requirements and required that all agency records be scheduled before they are sent to NARS centers. Previously NARS accepted unscheduled records in order to encourage agencies to send their records to centers. However, NARS now holds 3.8 million cubic feet of unscheduled records in its centers for which it has no disposition authority. These records comprise about 27% of the 13.7 million cubic feet of NARS holdings.

Even if all agency records are scheduled, it appears that the volume of records held by centers will continue to grow. In Fiscal Year 1979 NARS experienced an increase of over 500,000 cubic feet of records in its centers. NARS FY 1980 and 1981 projections also call for a surplus of records sent to centers compared with records disposed of. Over the three year period NARS center holdings will grow by about 1.1 million cubic feet--enough to fill an entire records center.

Last year you advised the subcommittee that you are working with DOD, IRS, and VA to resolve disposition problems involving 1.6 million cubic feet of records of these agencies. What progress can you report on your efforts?

ANSWER: DOD: As you know, our National Personnel Records Center currently stores over 1 million cubic feet of military personnel folders which are not scheduled for disposal or other disposition. We think we are now close to agreeing on a schedule for this series. Although proper appraisal, with appropriate participation by historians and genealogists, will take another several months, approval of the schedule will result in future disposals 75 years after receipt of the folder in our Records Center.

VA: VA claims folders for deceased veterans, some 300,000 cubic feet, are not now covered by any disposition authority. VA has recently developed a disposition standard and has received GAO concurrence. The proposed schedule will now be formally submitted to NARS, and if approved, these records too will be disposed of 75 years after receipt in the Centers.

IRS: Corporation tax returns 1909-1978 comprise nearly 475,000 cubic feet. I recently wrote to the Commissioner of IRS suggesting several alternatives to solving this problem. The Commissioner has replied pointing out that they must continue to retain these old returns pointing to several cases where returns, as early as 1909, were used in tax litigation involving sizeable sums of money. The Commissioner added, however, that IRS would continue to pursue technological advances to reduce storage costs.

The Archivist recently approved a schedule for District Court records covering 330,000 cubic feet of records.

Disposition for other major series including Job Corps, personnel folders, passport applications, and military pay vouchers is also being pursued. Agency acceptance of our proposed disposition standards for these series would result in the disposal of approximately 265,000 cubic feet.

NARS has continued its aggressive efforts to establish appropriate disposition standards for all Federal records, with a goal of reducing and ultimately eliminating the unscheduled records in our records centers.

As part of our general initiatives to reduce the amount of unscheduled records, early this year we developed information concerning these unscheduled records, as well as any records with excessive retention periods, and sent the information to the relevant agencies. Because agencies which have not scheduled all of their records are in violation of the Federal Property Management Regulations, we requested action plans so that we can monitor their progress in correcting these deficiencies. We also notified agencies that now have permission to send unscheduled records to the records centers that this authority will be cancelled if they do not cooperate in this endeavor.

We ,too, are aware that a major reduction in the cost of records storage would result if we could ensure that all records are properly scheduled and if we could reduce the retention period on the several large series of records now being retained for an inordinately long period of time. As discussed above, we are making considerable progress in this area.

RECORDS DECLASSIFICATION - $2,949,000 REQUESTED

QUESTION: Executive Order 12065 requires that (1) all classified information constituting permanently valuable records of the Government shall be reviewed for declassification as it becomes 20 years old and (2) the transition from the 30-year systematic review provision of the prior Executive Order to the new 20-year period shall be completed by December 1, 1988.

The Executive Order requires that all 20-year old permanently valuable classified information be reviewed for declassification by December 1, 1988. Your justification for 1981 shows that you do not expect to complete this task until 1997. Would you please explain why NARS does not plan to comply with the requirements of the Executive Order?

ANSWER: The level of resources requested as part of the President's Budget supports a smaller and therefore longer range program than initially contemplated in the Executive Order. Given this level of resources, an additional 9 years will be needed to complete the systematic review of security classified records falling within the purview of the Order.

NEW CONSTRUCTION

Question: $37.5 million is requested for new construction projects. Three of these projects totaling $21.8 million are for border stations at San Luis, Arizona, San Diego; and Houlton, Maine and because of their size require prospectuses to be approved by the authorizing committees. What is the status of the required prospectus for these projects?

ANSWER: **The status of prospectuses for these projects is reflected on the table that follows.**

Status of Required Authorizing Committee Actions on Prospectus Projects included in FY 1981 Budget Request

Project	Date Prospectus Submitted	Date Approved Senate	Date Approved House
San Diego, CA, Otay Mesa BS	3-12-80	No action to date	
San Luis, AZ, Border Station	3-11-80	No action to date	
Houlton, ME, Border Station	2-29-80	No action to date	

In the FY 1980 Supplemental, there are three projects which have fully approved prospectuses:

Project	Date Approved Senate	Date Approved House
Social Security Administration Great Lakes Program Center Chicago, Illinois (Claim)	2-23-73	2-27-73
Courthouse Annex, Miami, Florida	9-13-79	10-31-79
Customhouse, New Orleans, Louisiana	9-14-76	6-29-76

Question: The budget justification material (P. RP-16) shows that GSA expects to obligate $117 million for its construction program in 1981 and $49 million of this is for projects authorized prior to fiscal year 1979. Have any of the projects authorized prior to 1979 not yet been initiated?

Answer: The information follows:

PROJECTS AUTHORIZED BUT NOT YET UNDER CONSTRUCTION

Project	Date Authorized	Status
Los Angeles, CA Central LA Parking Facility	10-10-66	Amended prospectus being prepared - will pave lot
San Jose, CA CT-FOB-PF	06-30-77	Project under design; site has been selected
West Los Angeles, CA FBI Fed. Parking and Maintenance Facility	08-16-78	Construction contract will be awarded June 1, 1980
Savannah, GA FOB-PF	06-12-78	Architect/Engineer has been selected; site has been selected
East St. Louis, IL CT-FOB-PF	07-31-75*	Site has not been selected; project not yet under design
Boston, MA FOB	06-12-78	Site selection process underway; project not designed
Detroit, MI Ambassador Bridge BS	09-23-77*	Project under design
El Paso, TX FOB-PF	10-14-78	Architect/Engineer contract scheduled for award 6-15-80; site selected
Madison, WI CT	05-20-76*	Design complete; construction has not started
Laredo, TX BS	09-20-79	Design complete; construction has not started

*Amended prospectus pending before Committees on Public Works

REPAIRS AND ALTERATIONS

Question: According to the budget justification material (P. RP-18), the backlog of major repair and alteration projects is projected to be $1.3 billion at the end of 1981. This is a $58 million increase compared to 1980 to the backlog projected at the end of this year. Why is this backlog so large and why is it continuing to increase?

Answer: With the exception of FY 1978, the level of R&A funding received has not offset new work entering the inventory. As a result, our inventory has continued to grow. Much of the increase in the R&A inventory is attributable to inflation, which has consistently been over 10 percent in the construction industry the past several years. Incoming workload has also increased as a result of new programs such as energy, handicapped, omnibus court work; the acquisition of postal buildings; the restoration and rehabilitation of historical buildings; and the aging process of our buildings; the majority of which are over 30 years old. A significant increase in appropriation levels will be required in the future to reduce our workload inventory.

Question: In view of the authorizing committee moratorium, how does GSA expect to proceed with $180 million of Repair and Alteration work?

Answer: The moratorium placed on prospectus approval by the Senate Public Works Committee (PWC) will have no effect on the execution of the 1981 program because all of the projects have been approved by the Senate. However, two projects have not been approved by the House PWC, Portland, Oregon - Courthouse (New) $2,634,000; and the Seattle, Washington - Federal Building and Courthouse, $1,585,000. All other projects in the budget have been fully approved.

These two locations are Omnibus Judgeship Court projects which have been approved by the Senate and are pending before the House Committee. We expect approval of these projects due to the urgency of the court alterations.

Question: One of the prospectuses for a project in Louisville, Kentucky was approved 19 years ago and 4 others were approved prior to 1975. Why was funding never requested for these projects prior to this time?

Answer: At the present time, work included in our Repair and Alteration prospectuses is scheduled for accomplishment over a five year period of time. However the actual accomplishment of this work is dependent on our level of appropriations and the occurrence of anticipated tenant agency actions. With regards to the project at Louisville, Kentucky, a 16 year delay in the relocation of the Postal Service resulted in a similar delay by GSA in performing the anticipated work. There are 5 other projects included in our FY 1981 request approved prior to 1975. They have not been accomplished prior to FY 1981 due to either funding limitations or the uncertainty of tenant requirements.

Question: Since these projects were approved so long ago, shouldn't we require them to be reauthorized just to make sure they are still valid?

Answer: The work in these six prospectuses has been validated and four of the six prospectuses will be closed out upon completion of the work scheduled for FY 1981. Reauthorization of these projects would result in further delays and increased project costs.

Question: Please supply for the record a list of all those Repair and Alteration projects proposed for 1981 and the status of the required prospectuses and for those approved the date initially approved.

Answer: **The table follows:**

STATUS OF PROSPECTUSES REQUIRED FOR THE FY 1981 R&A PROGRAM

LOCATION	BUDGET AMOUNT	House Approval	Senate Approval
Los Angeles, CA - CT	$ 900,000	6/71	7/70
Pasadena, CA - FSC	9,864,000	5/79	7/79
Washington, DC Agriculture South	2,545,000	4/78	9/77
Washington, DC FB, New Post Office	1,892,000	5/74	12/73
Washington, DC GSA	4,000,000	5/68	7/68
Washington, DC HEW North	3,934,000	4/78	6/77
Washington, DC International Trade	1,300,000	5/74	6/74
Washington, DC Justice	1,740,000	3/76	5/76
Washington, DC Lafayette Building	864,000	4/78	9/77
Washington, DC Old Post Office	747,000	7/77	6/77
Washington, DC Mary E. Switzer, FB	3,928,000	4/78	12/76
Tallahassee, FL - PO CT	961,000	6/78	12/77
Miami, FL - PO CT	2,670,000	5/79	9/79
Tampa, FL - FB CT PO	2,008,000	10/79	9/79
Savannah, GA - FB CT	1,363,000	9/79	9/79
Chicago, IL - FB 536 S. Clark St.	550,000	3/76	5/76
Lexington, KY - PO CT	1,500,000	4/78	6/78
Louisville, KY - PO CT CU	800,000	6/61	6/61
New Orleans, LA - FB CT Hale Boggs	1,425,000	12/79	9/79

STATUS OF PROSPECTUSES REQUIRED FOR THE FY 1981 R&A PROGRAM (Cont'd)

Location	**Budget Amount**	**House Approval**	**Senate Approval**
Baton Rouge, La - FB CT	700,000	12/79	9/79
Suitland, MD - FB #3	1,392,000	9/72	10/71
Kansas City, MO - 811 Grand	735,000	4/80	9/79
Newark, NJ - FOB, 20 Wash. Place	560,000	6/78	6/77
New York, NY - 201 Varick St.	5,661,000	7/77	4/77
New York, NY - CU, One Bowl. Green	7,192,000	7/79	9/79
Portland, OR - CT (New)	2,634,000	Pending	9/79
Dallas, TX - FB CT Cabell	900,000	4/80	9/79
Houston, TX - FB CT	2,446,000	4/80	9/79
Arlington, VA - Pentagon	2,969,000	4/78	4/77
McLean, VA - CIA Headquarters	2,274,000	3/77	4/77
Seattle, WA - FB CT	1,585,000	Pending	9/79

INCREASE IN PURCHASE CONTRACT PAYMENTS

Question: Why are purchase contract payments going up $4.7 million? Aren't these essentially mortage payments with constant interest and principal payments?

Answer: One payment of Series L indenture was made in FY 80 because the principal and interest payment became due in the 2nd half of the year. In FY 81 there will be two normal principal and interest payments which has resulted in increase in the budgetary estimates of FY 81 comparison with FY 80.

7 Projects Completed under Series L.

Federal Building, New Haven, Connecticut
Federal Building and Courthouse, Ft. Lauderdale, Florida
Federal Building, Pittsfield, Massachusetts
Federal Building, Saginaw, Michigan
Federal Building, Jackson, Mississippi
Federal Building, Huron, South Dakota
Border Patrol Sector HQ, Marfa, Texas

IMPROVING COMPETITION FOR LEASES

Question: According to a recent GAO report (1/24/78) the competition on lease awards is too limited. GAO reviewed 65 new lease awards and 43 follow-on lease actions and found that GSA negotiated with only one offeror on 55% of the new lease awards and 95% of the follow-on leases. The negotiated rent exceeded the appraised Fair Annual Rent in 33% of the new lease awards and 20% of the follow-on lease actions involving only one offeror. What has GSA done to insure that competition is obtained to the maximum extent practical for both new leases and follow-on leases?

Answer: On March 16, 1976, a memorandum was issued to all regions emphasizing that action be taken sufficiently early in time to allow for the solicitation of competitive offers and to provide viable alternatives to the follow-on leases through the competitive process should the community space situation permit.

On March 1, 1978, a memorandum was issued to all regions which referred to the specific GAO reports and established a new trial procedure for new lease actions. This involved the establishment of specific lease requirements based on market survey data which would provide the optimum firm lease term, delineated area, and occupancy which would afford the best potential for maximum competition.

On July 13, 1978, a directive was issued to the regions restating our policy that a thorough market survey be conducted to generate competition on small blocks of space under 5,000 square feet.

On November 3, 1978, a memorandum to all regions was issued which stated that every effort should be made to obtain competitive offers on succeeding leases.

Question: GSA is usually in a poor bargaining position in negotiating succeeding leases for continued occupancy of existing space because it has no alternative space plans. It is obvious that a lessor has an advantageous negotiating position on succeeding leases when he knows the Government is reluctant to move because of relocation and alteration costs or because of lack of an alternative space plan. What has GSA done to improve the planning for probable succeeding leases to allow sufficient time, prior to lease expiration, for developing an alternative space plan?

Answer: GSA's regions are developing master housing plans for major cities throughout the country. The master plans are done in the form of Federal Space Situation Reports; present housing and agency needs are considered, alternatives are evaluated, conclusions drawn and recommendations for future housing are made. The selected recommendation may be carried out under regional authority or may require Central Office approval as in the case of a Postal Service acquisition, or Congressional approval as in the case of a prospectus project.

GSA's regions are also implementing a presidential executive order (now being codified) for relocating agencies into central business districts of communities (large and small) throughout the country. This policy directive, as a part of the planning process, requires cost considerations as well as cost/benefit analyses. This policy may be implemented under regional authority in the form of a Regional Planning Memorandum or with Central Office approval usually after prospectus approval by the Public Works Committees.

GSA's National Capital Region (NCR), where the limited space situation is most severe, has developed for OMB approval a Ten Year Plan for housing Federal agencies in the NCR in a mix of new Federal and leased buildings.

The above two policies and the NCR Ten Year plan for housing Federal agencies in the NCR are in addition to GSA's normal plan for identifying communities where housing problems or potential housing problems exist. The resulting Federal Space Situation Report, Regional Planning Memorandum or Prospectus provides GSA with alternatives to the existing situation.

REAL PROPERTY OPERATIONS

Question: The Real Property Operations category shows a $11.3 million reduction "To provide a more austere level of service." How is this reduction decided? Who decides it?

Answer: Some 2 years prior to the beginning of each fiscal year, the agency begins a budget formulation and estimating process. Two years ago, GSA believed that we could save $11.3 million through our increased energy conservation program and improved efficiencies. This projection was based upon an estimated inflation rate of approximately 7% in the area of utilities. Two years ago this was a prudent estimate.

As you well know, in today's inflationary climate this estimate is no longer realistic. We are now estimating our income of approximately 20% in utilities. Because the FY 1981 Real Property Operations budget is an austere one, we will not be able to absorb the substantial utility increases within our request level.

Question: Isn't this contrary to the concept of SLUC payments which are to provide a commercially equivalent service?

Answer: In 1980, we are continuing to provide approximately the equivalent level of service. In 1981, we expect to maintain approximately that same level of service, with the exception of the utilities costs.

FY 1980 SUPPLEMENTAL REQUEST
CONSTRUCTION

Question: An increase of $15.3 million is requested for 9 new construction projects. Which of these projects have not yet received full congressional approval by the authorizing committees?

ANSWER: **The information follows:**

Status of Required Authorizing Committee Action

Project	**Prospectus Submitted**	**Date Approved Senate**	**House**
Little Rock, AR, PO-CT Extension	**3/13/80**	**No action to date**	
East St. Louis, IL, CT Amendment	**10/30/79**	**No action to date**	
Boston, MA, FDA Purchase	**3/30/79**	**No action to date**	
Detroit, MI, Ambassador Bridge BS Amend.	**2/29/80**	**No action to date**	
Vancouver, WA, FOB	**3/31/80**	**No action to date**	
Madison, WI, CT Amendment	**3/20/80**	**No action to date**	

FULLY APPROVED	**Amount**
Louisiana, New Orleans, CU	**$7,646,000**
Illinois, Chicago, SSA Program Center (Claim)	**600,000**
Florida, Miami, CT, Annex	**21,012,000**

Question: An increase of $25.6 million is requested for 12 new major repair projects. Have they been approved by the authorizing committees?

Answer: An R&A supplemental appropriation in the amount of $25.6 million has been submitted to the Congress for 12 projects deleted from our FY 1980 Congressional submission. The 12 projects were deleted because prospectuses had not been approved at the time Congress took action on our FY 1980 budget request. Three of the prospectuses required for the projects in the supplemental request have now been approved and a number of others are in the final stages of approval.

The three approved projects are:

Phoenix, AZ - FB, CT	$ 630,000
Chicago, IL - Dirksen Building	6,220,000
Huntington, WV - PO CT	2,305,000

Question: GSA purchased participation certificates on the open market instead of making scheduled mandatory redemptions at par value the difference being $4,000,000. This action has been appealed and is now in the Courts. Why should these funds be appropriated until the Court settles the case?

Answer: Additional limitation is requested for mandatory redemptions of outstanding participation certificates. At the time the FY 1980 Budget was submitted to Congress, based on information provided by the Trustee, GSA anticipated that credits would be available for use in lieu of mandatory redemptions. Subsequent to the presentation of the Budget to Congress, the Trustee informed GSA that these credits were not to be used. This matter is currently under litigation. In the interim, GSA must continue to make redemptions on the scheduled dates. Failure to do so could result in default.

INCREASED PAY COSTS

Question: How much of the increased pay cost needs have been absorbed?

Answer: Total pay cost needs amount to $48,191,965, of which $15,956,965 will be absorbed. The remainder of $32,235,000 requires a supplemental appropriation in the amount of $17,623,000 and an increase in limitation of $14,612,000 for the Federal Buildings Fund.

QUESTIONS SUBMITTED BY SENATOR HARRISON SCHMITT

NATIONAL ARCHIVES

QUESTION: Admiral, let me congratulate you on your efforts to disperse and reorganize the National Archives. Washington is not the repository for the sum total of human knowledge. How much have the archivists requested for the Historical Grants Program?

ANSWER: We have requested $4,000,000 for FY 1981, the full amount of the current authorization.

RECORDS SERVICE

QUESTION: How much could you save if records were stored in areas outside of Metropolitan Washington, DC?

ANSWER: There is no definitive answer to the question because the amount of savings would depend upon where the records were ultimately located. Charges for space are based on comparable private sector rates in the immediate area. Consequently, space charges vary depending upon geographic area and proximity to major cities. Very little, if any, savings would accrue if the records were stored in proper facilities in or near other major metropolitan areas. On the other hand, if the records holdings were housed in low-cost areas, savings could amount to $320,000 annually and would increase somewhat as the size of the archival holdings increase. This figure assumes that records currently housed in the National Archives Building would remain there--the building was designed for this use and without very major and costly renovations could not be converted to other uses--but that the approximately 370,000 cubic feet of archives now housed in the Washington National Records Center would be relocated to one low-cost facility outside the Washington metropolitan area. The figure also excludes possible savings from reduced charges for heat and air conditioning.

Another alternative would be to distribute the records now in Suitland, Maryland to several of the already established archives branches in the Federal Archives and Records Centers. Savings resulting from this alternative would be somewhat less, depending upon which existing branches were utilized, but could range from approximately $100,000 to over $200,000.

In either case a new facility or extensions to existing facilities would have to be built, so space cost savings would not be realized for several years. Although I certainly agree that it is not necessary for Washington to be the repository for the sum total of human knowledge, I do not think a case for dispersal of archival records for economic reasons can be supported. As you can see, the dollar savings are relatively small, and there are substantial, although mostly non-quantifiable, problems for researchers associated with the dispersal of large quantities of archival records.

I still feel that where it can be accomplished without an adverse effect on research, records can and should be transferred to other areas, partly to increase their accessibility and partly to alleviate the very real shortage of space in the Washington, DC area. Where physical transfers are not feasible, technology should be utilized to increase their accessibility.

ARCHIVAL CONFERENCES

QUESTION: How much has been expended for overseas travel for archival conferences and what generates the need for these conferences?

ANSWER: In FY 1980 approximately $8,000 will be spent on international travel for archival conferences. (This amount does not include travel associated with the Declassification and the Information Security Oversight Office programs). The figure is substantially higher than the average annual expenditure because of the quadrennial meeting of the International Council on Archives (ICA) to be held in London in September. NARS is sending four representatives--the Acting Archivist who serves as editor of the International Journal of Archives, the ICA journal, the Director of NARS' Machine-Readable Archives Division who has been requested to deliver a paper on quantitative research in Archives (he is the only North American presenting a paper), and 2 division directors who hold offices on major committees of the Council.

As discussed in recent oversight NARS hearings, the Acting Archivist believes that participation in international archival associations such as the ICA is important and beneficial. NARS is a charter and active member of ICA which was founded 31 years ago to elevate standards of archival administration throughout the world and which, over the years, has provided a consistent example of harmonious international cooperation on a professional level. There are now 112 countries represented by their national archival organizations in the ICA. They share information on improved techniques and procedures in the archival and records management fields through publications, conferences, committee work, and other means. Dr. James B. Rhoads, former Archivist of the United States, was President of the ICA for 3 years, a post in which he was preceded by Dr. F.I. Dolgikh of the U.S.S.R. Third World countries which began to enter the ICA in the 1960's, have depended heavily on this international organization's pooled expertise to assist their archival development efforts. We believe the U.S. involvement in ICA is important to the archival profession and a positive force for international cooperation and understanding.

ARCHIVES TRUST FUND

QUESTION: Can you give us an explanation of the National Archives Trust Fund mechanism and membership of the National Archives Trust Fund Board?

ANSWER: The National Archives Trust Fund Board has three members. The Archivist of the United States (who serves as Chairman), the Chairman of the National Endowment for the Humanities, and the Secretary of the Treasury. There are really two funds--a gift fund and a revolving fund. The gift fund was established to accept gifts or bequests of money, securities, etc. for the benefit of or in connection with the National Archives and Records Service's archives and records activities. These gifts may be restricted or unrestricted. Examples of recent gifts include: A gift from Cornell University to fund an Exhibit of the Layfayette Papers; two gifts from the Mellon Foundation, one to publish the papers of five prominent Revolutionary War figures and another to support a fellowship in historical editing as well as editing institutes and conferences; and a grant from the Wallace Foundation which also supports a fellowship in historical editing.

The Trust Fund is a non-appropriated revolving fund that finances reproduction services and the preparation and publication of special works, collections of sources, and other programs and activities "for and in the interest of the National archives and records activities."

Income from the sale of reproductions, publications, or other releases and activities financed by the Fund as well as from admissions from the Libraries is deposited with the U.S. Treasury in the National Archives Trust Fund. The funds are administered by the Board for archival programs and for programs associated with the Presidential Libraries. Currently the Administrator of GSA has no authority over Trust Fund expenditures. Two bills altering the Trust Fund have been introduced. H.R. 6334 introduced by Congressman Preyer, would shift most of the programs now financed by Trust Funds to appropriated funds and would essentially reduce the financial activities of the Trust Fund to those now associated with the gift fund. Many of the activities now financed by Trust Funds would be carried with appropriated funds with reimbursement from fees collected from the public.

Another bill introduced by Congressman Preyer, at my request, H.R. 6335, would keep the authority and responsibilities of the Fund basically as they are now in that the Fund has proven to be a useful and beneficial vehicle for accomplishing many archival programs. The bill would, however, alter the membership of the Board and the authority of the Administrator. The Administrator would serve as Chairman of the Board and would exercise oversight and control of the Fund. The Archivist of the United States and the Chairman of the National Endowment for the Humanities would serve as the other two members. Similar to H.R. 6334 the bill would eliminate the Board's excepted hiring authority and would make other adjustments in the Board's authority.

QUESTION: Do you have any indication that funds have been diverted from the Archives Trust Fund and used for travel abroad, publicity gimmicks and cocktail parties?

ANSWER: The term "diverted" is not perhaps accurate in that it seems to imply a prohibition against such expenditures, and while one may question the wisdom or appropriateness of any particular Trust Fund expenditure the statutory authority governing expenditures is very broad.

As discussed in recent oversight hearings on the Trust Fund and NARS' preservation programs, funds have been expended for receptions in connection with exhibit openings, an annual reception for the Archives Associates, luncheons for the National Historical Publications and Records Commission and NARS volunteers, a luncheon and reception for the National Archives Advisory Council, and coffee and pastry for several smaller functions. The propriety of these expenditures was not questioned at the oversight hearings, although it was requested that such expenditures should be itemized on the Trust Fund financial statement as entertainment expenses. I might add that unlike other agencies and institutions with similar programs and missions, the National Archives has no representational allowance. Consequently, refreshments served in connection with any of its activities must be financed from Trust Funds.

As for "publicity gimmicks," I am unsure which programs or activities are being so characterized. There has been a good deal of discussion recently about the appropriateness of some of the publications of the Trust Fund--particularly those aimed mainly at the non-scholarly segment of its constituency--and of what have been termed "souvenir items" sold at the sales desk in the Archives building. It is my understanding that the Trust Fund Board, partly in response to this criticism is undertaking a review of the appropriateness of the continuation of the sale of these items.

As for foreign travel, I am not aware of any foreign travel, at least in the last several years, paid for from the Trust Fund, although, as noted in GAO's report on the subject, the Fund has been utilized for temporary financing of such trips pending reimbursement from such organizations as the International Council on Archives.

QUESTION: Do you see the possibility that funds appropriated for Archives activities will be used for lobbying activities with Congress?

ANSWER: Anything, of course, is possible, but I doubt seriously that any funds could or would be utilized for such activities. Neither the Acting Archivist nor I would permit it, and I know the Acting Archivist would take appropriate corrective action should any funds be spent for this purpose. I can speak from experience, however, when I say that no such funds are necessary to support "lobbying" activities.

COURT SECURITY

QUESTION: Do buildings housing United States Court facilities receive the same level of security as other buildings housing federal agencies, such as the Department of Agriculture, HEW, etc.?

ANSWER: Yes.

QUESTION: Is the level of security governed by GSA regulation or is it a matter of legislation?

ANSWER: The United States Courts receive the same level of security as other Federal agencies based on a standard level protection as prescribed by the Code of Federal Regulations, Chapter 101, Subpart 101-20.5, entitled Physical Protection. Any additional or special protection requirements would be funded on a reimbursable basis.

QUESTION: In view of the nature of activities carried on in and around United States Courts, should not these buildings have a higher level of security?

ANSWER: The Public Buildings Service (PBS) of the General Services Administration has historically recognized the highly sensitive activities which occur in the United States courts. The organizational unit within PBS that is responsible for providing security services to the United States Courts is the Federal Protective Service (FPS). FPS has provided a higher level of security to the courts when those activities such as sensitive trials have arisen. FPS provides a standard level of security service that is defined by Federal Property Management Regulation 101-20.501. Additional security requirements are determined through joint security surveys with the U.S. Marshals Service, U.S. Postal Service, United States Administrative Office of the U.S. Courts and the Federal Protective Service.

QUESTION: Why can't the higher levels of building security be included in the basic rent charged to the building occupants (Standard level user charge)?

ANSWER: The provision for charging client agencies for higher levels of building security is contained in the Federal Property Management Regulations under Subpart 101-21.4 entitled Reimbursable Services. We feel that the procedures used to determine the Standard Level User Charges should remain unchanged.

QUESTION: Is the U.S. Marshals Service always consulted when increasing, decreasing, or otherwise changing GSA guards at buildings housing United States Court facilities? What happens when the U.S. Marshals Service objects to such changes?

ANSWER: In all instances FPS closely coordinates its court security program with the U.S. Marshals Service. The two agencies serve the buildings housing the courts in different capacities. I am providing you with copies of a memorandum of understanding between both agencies which outlines the nature of each agency's responsibility to the needs and security of the U.S. Courts. If and when questions arise as to either the reduction or redeployment of FPS personnel it has always been the practice jointly to seek appropriate resolutions. It should be noted that FPS considers all buildings that house the U.S. Courts as high security priorities.

The memorandum of understanding follows:

MEMORANDUM OF AGREEMENT - COURT SECURITY

The areas of responsibility for the protection of Federal Judges and Federal Court facilities and personnel were recently redefined by the Interagency Study Group on Judicial System Security. This memorandum clearly defines and delineates the contemporary responsibility of the General Services Administration (GSA), the United States Postal Service (USPS), the United States Marshals Service (USMS), and the Administrative Office of the United States Courts (AOUSC), for the protection of Federal judges and Federal court facilities. This Memorandum of Agreement supersedes all previous agreements and memoranda as pertain to court security.

The following are the areas of responsibility for each agency and their authority:

1. The General Services Administration has the primary security responsibilities in the following areas:

a. To participate in all joint Physical Protection Surveys of buildings housing U.S. Court Facilities under GSA control with U.S. Marshals Service and Administrative Office representatives (FPMR 101-20.501).

b. To review plans and initiate a joint security survey for all new construction, renovation, and leased space projects (FPMR 101-20.501).

c. Furnish as normal protection not less than the degree of protection provided by commercial buildings operators of similar space for normal risk occupants, as determined by GSA. Normal protection services will be based on a 5-day week, one shift operation including adequate start-up and shut-down periods plus additional uniformed officers for perimeter protection to meet short term extenuating circumstances as determined by GSA (FPMR 101-20.501 and 101-21.300).

d. The operation of the uniformed protective force (FPMR 101-20.503).

e. For liaison with local fire and police agencies in providing normal protection as afforded in item c.

f. As deemed necessary by joint security surveys, provide on a reimbursable basis additional Federal Protective Service Uniform officers and special protection security systems and service. Reimbursable costs will be based on equipment cost, installation, maintenance, replacement, manpower, and administrative cost as estimated annually by GSA (FPMR 101-20.501).

g. Supervision and control of all building entry systems, building pass systems, and master building keying systems.

h. Entry control of building occupants and visitors at perimeter entrances as required (FPMR 101-20.501).

i. To investigate thefts of property and violations of Federal statutes covering crimes committed in or on buildings and grounds under GSA assignment (FPMR 101-20.503-2).

j. To assist appropriate officials of the occupant agency(ies) and cooperate with the local authorities in developing and achieving the objectives of the Facility Self Protection Plan (FPMR 101-20.504-2,c.).

k. Purchase and install security equipment in court areas in buildings to be constructed. The cost of purchasing and installing security systems and equipment will be included when prospectus level alterations or repairs are to take place in existing buildings owned or controlled by GSA to provide space for the courts.

2. The U.S. Postal Service has the primary security responsibilities in USPS buildings housing U.S. Court facilities in the following areas:

   a. To review results of all joint Physical Protection Surveys.

   b. To participate in joint security surveys for all new construction, renovation, and leased space projects in which the Postal Service has a proprietary interest.

   c. Furnish protection services as deemed required by the Postal Service, after consulting with the parties involved. Basic protection services will consist of a 5-day week with one shift operation, plus additional uniformed officers for perimeter protection to effectively handle short-term exigent circumstances (subject to the limit of available resources and manpower).

   d. The operation of the U.S. Postal Service Security Force, in accordance with such deployment deemed necessary by the Postal Service and liaison with local fire and police departments, (Publication 159, Contingency Plan C).

e. To provide, on a reimbursable basis, additional manpower and special protection security systems, with the concurrence of the Postal Service. The reimbursable cost for this equipment and manpower is to be based on its cost plus installation, maintenance, replacement, manpower, and administrative cost as mutually agreed upon between GSA and the Postal Service.

f. Supervision and control of all building entry systems; master building keying systems; entry and control of building occupants and visitors at those entrances deemed necessary by the Postal Service for the security and protection of U.S. Court facilities.

g. To investigate violations of pertinent Federal criminal statutes concerning buildings owned or leased by the Postal Service.

3. The United States Marshals Service has the primary security responsibilities in the following areas:

a. That the USMS be designated as coordinator for security services to the Judiciary.

b. Administer and implement the security requirements for all designated assigned space occupied and used by the Judiciary within the facility for conducting judicial business. The following areas are included: courtrooms, chambers, hearing rooms, magistrates' offices, jury and witness rooms, courtroom holding cells, prisoner and judicial elevators, clerks' offices, and other allied offices such as conference rooms and libraries (28 CFR 0.111(d)).

c. Conduct joint security surveys of buildings housing federal courts in conjunction with the responsible management agency, GSA or USPS. The survey will encompass building security to include perimeter security systems and manpower requirements for buildings and the protection of Judicial space and affiliated personnel utilizing the attached "Guidelines for Court Security" (28 CFR 0.111 (d)).

d. Review proposed plans for new buildings which will house U.S. Courts as to design of the building, location of the courts, space assignment and layout, installation of security systems, and prisoner handling areas. The above will apply to all repair and alterations in existing buildings housing U.S. Courts (28 CFR 0.111(d)).

e. In consultation with the trial judge(s), provide protection to the Judiciary and all trial participants during problem or stressful trials in order to maintain the integrity and dignity of the courts through the use of special equipment, additional manpower or a combination thereof (28 CFR 0.111(d)).

f. As a standard level of protection to the Judiciary, the USMS will provide, as a minimum, the following security requirements:

(1)One deputy for each criminal proceeding conducted by United States District Court Judge.

(2)Sufficient deputies for defendants in custody as determined by the U.S. Marshal.

(3)Sufficient USMS personnel to safeguard Grand and Petit Juries with particular emphasis to sequestered juries as determined by the USMS.

(4)Appropriate USMS personnel to safeguard the integrity of the courts during civil trials involving highly unusual or extraordinary circumstances as determined by the USMS.

(5)Control, safeguard and supervise all prisoners appearing in federal court proceedings. This includes transporting to and from detention cells as well as prisoner security within the courtroom.

(6)Protection to the courts at all times as stated above, but deputies are not to be used as criers, or personal attendants or as guards in fixed posts as a routine duty (28 CFR 0.111 (C-E-K)).

g.Protect all Judicial officials and other trial participants whose involvement in the Judicial process may subject them to threats or physical violence outside the environs of the federal court facility. This protection will be established by the USMS in consort with the AOUSC and appropriate investigative agencies. It will continue until the threat no longer exists or is substantially diminished as determined by the USMS after consultation with the other agencies involved (28 CFR 0.111 (C & E)).

h.When in the opinion of the U.S. Marshal special mobile security equipment and personnel incident to its use are required for judicial or trial security, the costs will be borne by the USMS.

The Administrative Office of the United States Courts has the following responsibilities as pertains to court security:

a. The AOUSC will fund for the purchase, installation and maintenance of security equipment to include the monitoring devices which are used to provide protection to the Judiciary in existing buildings.

When alterations are to be made in existing buildings or new construction of court facilities is to take place, the design and installation cost for the security systems will be included in the associated prospectus.

b. The AOUSC is responsible to fund on a reimbursable basis for the service to the Judiciary of Federal Protective Service uniformed officers not provided as normal protection as a result of a security survey (28 USC 604 (a) Judiciary Appropriation Act).

c. The AOUSC will establish priorities as pertains to security surveys and inspections in conjunction with the USMS, GSA and USPS as appropriate. The AOUSC will review and approve the findings and recommendations submitted, and will issue work authorizations for the funding of the installation of systems, equipment and uniformed protection to the Judiciary as appropriate.

When any of the signatories plan to permanently change the protection in buildings housing U.S. Courts, (based on the latest survey) no action will be taken until all parties are advised in writing. When the service of reimbursable uniformed protection officers is to be discontinued, advance notice of 90 to 120 days will normally be required. This is necessary for budgeting, any personnel actions, and for an orderly transition. All parties agree that they will provide mutual assistance, subject to the limit of available resources and manpower, at no additional cost, when necessary.

★ APPROVED: William E. Hall

Director, United States Marshals Service

DATE: October 14, 1977

★ APPROVED: Benj. F. Bailar DATE: 10-18-77

Postmaster General, United States Postal Service

★ APPROVED:

Director, Administrative Office of
the United States Courts

DATE: October 20, 1977

★ APPROVED: DEC 16 1977

The Administrator, General Services Administration — Date

★ Signature superimposed from the original document.

QUESTION: Please provide for the record the number of manyears expended by GSA at buildings housing United States Courts comparing fiscal year 1975 with 1979?

ANSWER: In fiscal year 1975, 805 manyears were expended by GSA to the U.S. Courts as compared to fiscal year 1979 when 717 manyears were expended. This is a decrease of 88 positions.

QUESTION: Has the amount of money reimbursed to you by the Courts for security increased since 1975? At the same time have you decreased manyears devoted to security for the courts?

ANSWER: The amount of money reimbursed to GSA by the U.S. Courts for manpower in 1975 was $5,891,900; in 1979 the reimbursable costs were $6,267,562, an increase of $375,662. The amount of funds reimbursed for security systems has decreased by $2,899,216.

It should be noted that prior to 1975 most of the costs were for installation of new security systems. Since 1975, expenditures have been primarily for maintenance and installation of some new systems. For this same time period there has been a decrease of 21 manyears since 1975 (from 32 to 11). Due to decreases in manpower resources, that were directed by OMB, the Federal Protective Service has found it necessary to reallocate manpower on a national basis.

QUESTION: Can contract guards arrest an individual who poses a threat to the security of a Federal building? If not, how are these arrests handled?

ANSWER: Contract guards do not have authority to arrest an individual who poses a threat to the security of a Federal building. In Federal buildings that have Exclusive Jurisdiction, Federal Protective Officers are onsite and will make all necessary arrests. In those Federal buildings housing the U.S. Courts that have Concurrent or Proprietorial Jurisdiction, either onsite FPO's or local authorities can be called upon to respond. FPO's have arrest authority under Title 18 of the United States Code. Contract guards have only the same arrest powers of a private citizen.

TARIFF BUILDING

QUESTION: Why can't GSA satisfy the International Trade Commission's complaints ranging from polluted water to poor building conditions? For our record would you get together with the ITC and then tell us what you are doing to solve the problems down there?

ANSWER: We at GSA are working closely with ITC officials on the correction of problems at the ITC building. Many on-going problems have been corrected including the completion of a chemical analysis of the drinking water which found it to be potable.

A $5.8 million prospectus for renovation of the building was approved in 1974. Work did not proceed, however, because it was felt the building would be turned over to the Smithsonian Institution. A decision has recently been made that GSA will continue to occupy this building and we are, therefore, going forward on the prospectus renovations. We expect to award a contract for roof repairs in June 1980. We will be unable to complete the total scope of the original prospectus due to inflationary increases and we will be forwarding, in the near future, a supplemental funding request for consideration.

Liaison between GSA and ITC has already been established and the results are apparent in improved building cleanliness and operational efficiency. The National Capital Region (NCR) has assembled a task force to survey and identify unsatisfactory building contions and coordinate corrective action. NCR's task force meets on a regular basis with ITC officials to chart progress and discuss future needs. Mr. Walter Kallaur, NCR's Regional Administrator, met on April 11, 1980, with ITC Chairman, Catherine M. Bedell, to discuss plans for the renovation of the building.

In light of the recent improvements made at the facility and the meeting between Regional Administrator Kallaur and ITC Chairman Bedell, we feel the situation at the ITC building is improving daily. We will constantly monitor this progress to assure the positive steps taken thus far continue.

CONCLUSION OF HEARINGS

Senator CHILES. I think our time is up. I have kept you here a long time now.

Thank you very much for your appearance.

We will now stand in recess subject to the call of the Chair.

[Whereupon, at 12:10 p.m., Thursday, May 1, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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